

DEPARTMENT OF HOMELAND SECURITY LAW  
ENFORCEMENT OPERATIONS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

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MARCH 11, 2008

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## DEPARTMENT OF HOMELAND SECURITY LAW ENFORCEMENT OPERATIONS

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TUESDAY, MARCH 11, 2008

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:11 a.m., in room 2237, Rayburn House Office Building, the Honorable Robert C. (Bobby) Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Delahunt, Nadler, Jackson Lee, Gohmert, Sensenbrenner, Coble, and Chabot.

Staff present: Bobby Vassar, Subcommittee Chief Counsel; Mario Dispenza (Fellow), ATF Detailee; Ameer Gopalani, Majority Counsel; Veronica Eligan, Majority Professional Staff Member; Kimani Little, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. The Committee will come to order. I am pleased to welcome you today for the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on the Department of Homeland Security law enforcement operations.

In 2002 the Department of Homeland Security was created in the wake of the terrorist attacks of 9/11/2001. The concept was to transform and realign multiple agencies of various functions into one department, to streamline intelligence and law enforcement, and better protect the United States from terrorist attacks.

One of the shortcomings that we had was we were trying to get all the agencies together, because the FBI wasn't talking to the Department of Defense who wasn't talking to the CIA. And when the dust settled, we looked up and we had a new department and none of those agencies were in the Department of Homeland Security. So instead of three people not talking to each other—

Anyway, the concept is the concept, but as part of the creation of the department, the following law enforcement agencies were either transferred to DHS or created by consolidation: the Transportation Security Administration, Customs and Border Protection, Immigration and Customs Enforcement, Secret Service, and the Coast Guard. These agencies, their functions, their accomplishments, and their challenges are the subject of this hearing.

The TSA's main law enforcement functions are the Federal Air Marshals and the National Explosives Detection Canine Team programs. Air marshals are deployed on flights around the world and

the United States to ensure the security of the plane and the passengers during flight. During this hearing, the Subcommittee will follow up on issues from the 2005 hearing and inquire about the effectiveness of air travel security.

The TSA's National Explosives Detection Canine Team program prepares dogs and analysts to locate and identify dangerous materials that may present a threat to transportation systems. Explosives detection canines can be a valuable tool in foiling terrorists' plots, which is why a number of agencies outside the DHS conduct explosive detection services with canines.

However, the training standards and methods differ among agencies, which has caused controversy among the experts in the field. The Subcommittee will inquire about whether multiple efforts among agencies using different methods and standards are the most effective use of Federal resources, or whether a national standard should be established by one agency.

The United States Customs and Border Protection is responsible for protecting our Nation's borders from terrorism, human and drug smuggling, and illegal immigration, while simultaneously facilitating the flow of legitimate travel and trade. This agency must work a fine line of balancing the urgency of securing the borders while being the least intrusive on commerce and the liberty rights of Americans as possible.

Some privacy and civil rights groups have voiced concerns about the techniques that might violate the first amendment. They have demanded that CBP disclose its policies when questioning travelers on first amendment protected activities, photocopying individuals' personal papers, searching laptop computers and other electronic devices, and we may discuss these policies today.

The Committee will also inquire about the Operation Streamline initiative, which targets for prosecution those who enter the United States through high-traffic areas near the United States' southwest border in violation of criminal law. Concerns have been raised about Operation Streamline being too aggressive, and allegations that have been raised by some U.S. citizens about being improperly subject to deportation.

The Immigration and Customs Enforcement, or ICE, is the largest investigative branch of DHS and focuses on targeting unauthorized aliens, people, money, and materials that support terrorism and other criminal activities in meeting its mission objectives. Today the Subcommittee will explore issues related to ICE policies and practices related to investigation and detention and removal of unauthorized aliens.

In 2007, the Government Accountability Office report about ICE practices identified problem areas, recommended that ICE update its policies for alien apprehension and removal, streamline and improve its dissemination of legal updates, and develop a system of determining comprehensive best practices to uniform supervisory reviews of officer discretion. The Subcommittee will inquire about how ICE is responding to the GAO's recommendations.

In addition to its protection responsibilities, the United States Secret Service also investigates financial crime violations. The Subcommittee will want to know about the investigation of financial

crimes, which pose a tremendous threat to our national security and the personal finances of all Americans.

According to the Privacy Rights Clearinghouse, more than 150 million records containing sensitive information—personal information—have been involved in data security breaches since 2005. Since November 2005, there have been at least 436 data security breaches in the United States affecting millions of American consumers. The Subcommittee will inquire as to how the Secret Service is responding to combat these threats.

The United States Coast Guard law enforcement mission is maritime security, which is to protect America's maritime borders from all intrusions hosting the flow of illegal drugs, aliens, and contraband into the United States through maritime routes, preventing illegal fishing, and suppressing violations of Federal law in maritime areas. The Subcommittee will inquire the Coast Guard's success in these areas, and will also explore the Coast Guard's plan for updating its technology. For example, the Coast Guard is developing an important homeland security program called the Automatic Identification System, which will enable the Coast Guard to employ a nationwide system for identifying, tracking, and communicating with vessels in U.S. harbors.

With that said, it is my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Texas—from the 1st Congressional District of Texas—former judge Louie Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott. I couldn't tell, are these microphones working?

Mr. SCOTT. Yes, I believe it is.

Mr. GOHMERT. You would be better off, probably, if mine wasn't. But I appreciate Chairman Scott's comments.

I wasn't in Congress when Homeland Security was created; as I recall it was a fairly bipartisan effort, because the 9/11 Commission recommended it. But in my layman state of ignorance, I sure didn't think it was a good idea to add another level of bureaucracy. Gee, if they are not communicating, let us add another level of bureaucracy that everybody will have to communicate through. And it seems that when I had that opinion in my state of ignorance, that maybe I wasn't as ignorant as one might have thought.

But I want to thank you for scheduling this hearing. This is the first hearing the Subcommittee will have on law enforcement agencies in the Department of Homeland Security. This represents an opportunity to learn more about the vast law enforcement mission given to DHS.

Last week our full Committee held an oversight hearing on the entire department. At that hearing, Secretary Chertoff focused his comments on answering questions on immigration issues. Today we look forward to hearing from the representatives of the five law enforcement agencies.

We want to hear about your missions, your capabilities, and what challenges you expect to face in the near future. That also will tell us what we need to do to help you.

The Department of Homeland Security has wide Federal law enforcement authority to achieve its mission to secure the homeland. That law enforcement authority is divided among five agencies—of course, you know this well: the U.S. Coast Guard, the U.S. Secret

Service, the Federal Air Marshal Service, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

The United States Coast Guard patrols international waters and America's coasts and waterways. With over 43,000 employees, Coast Guard Service is the lead Federal agency to combat maritime illegal immigration and for maritime drug interdiction. Each year, Coast Guard drug interdiction accounts for nearly 52 percent of all U.S. government seizures of cocaine.

U.S. Secret Service is best known for its mission to protect the President and other national and foreign leaders; however, the Service combats the counterfeiting of U.S. currency, and guards against cyber-attacks on our financial and telecommunications infrastructure. In 2007, the Service seized an estimated \$147 million in counterfeit dollars.

Federal Air Marshal Service is the primary law enforcement agency within the Transportation Security Administration. Each year the Air Marshals deploy on thousands of flights, domestically and internationally, to protect passengers and crew from criminal and terrorist attacks in the air.

United States Custom and Border Protection is responsible for securing the U.S. borders and ports, works to prevent terrorists and terrorist weapons from entering the U.S., and combats drug trafficking and human smuggling along the border. In 2007, CBP seized more than 87,000 pounds of cocaine, and more than 307,000 pounds of marijuana in its law enforcement operations.

U.S. Immigration and Customs Enforcement is the largest investigative arm of DHS. With the second-largest cadre of special agents in the U.S., ICE targets the people, money, and materials that support terrorists and criminals. Since 2003, ICE has seized more than \$600 million in cash and monetary instruments, and more than \$850 million worth of real property, vessels, aircrafts, artwork, vehicles, and jewels.

DHS has had an impact in law enforcement, but there is still more to do, of course. I look forward to working with Chairman Scott on ensuring effective oversight of DHS law enforcement agencies—and that is why I am pleased you called this hearing—and look forward to this hearing and learning more about the problems you face, the challenges you have ahead, and how we can work together to solve them.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

I will ask other Members to have their statements in the record. If there is no objection, we will continue by introducing our panelists.

Our first witness will be Mr. Dana Brown, assistant administrator for law enforcement for the TSA, and director of the Air Marshal Service. He served with the U.S. Secret Service for 25 years, and is retired as assistant director for the Office of Administration before bringing his expertise and experience to the Federal Air Marshal Service in 2003. He has a bachelor's degree from the College of William and Mary in Virginia.

Our next witness will be Mr. Jeffrey Self, Southwest Border Division chief, Office of Border Patrol. He is a 19-year veteran of the Border Patrol, having served in numerous patrol areas in leader-



ship positions. As Southwest Border Division chief, he is responsible for the activities of nine Southwest Border sectors and over 11,000 Border Patrol agents.

Our next witness will be Raymond Parmer, deputy director of the Office of Investigations to the U.S. Immigration and Customs Enforcement. As deputy director, Mr. Parmer oversees the largest investigative arm of the Department of Homeland Security, is responsible for the policy planning, management, and operations conducted under the five major investigative program divisions within the Office of Investigations. He has a Bachelor of Arts degree in criminal justice administration from the University of South Alabama, and a Master of Science degree in criminal justice management from the University of Southern Mississippi.

Our next witness is Michael Stenger, the assistant director, Office of Investigations, United States Secret Service. He is a 31-year veteran of the Secret Service, and has served in numerous protective, investigative, and staff assignments. For his current assignment, he serves as the senior official overseeing the agency's investigations. In this capacity, he develops and implements policies as it pertains to the cyber and fraud related crimes that the agency investigates. He has a Bachelor of Arts degree from Fairleigh Dickinson University in New Jersey.

Our final witness is Rear Admiral Wayne Justice, who serves currently as the assistant commandant for Capability, and as the director of Response Policy for the United States Coast Guard. As the assistant commandant for Capability, he is responsible for the allocation, distribution, management, and recapitalization of all Coast Guard operation forces. As the director of Response Policy, he is responsible for the development of doctrine and policy guidance for all Coast Guard forces to accomplish operational maritime missions in the areas of search and rescue, law enforcement, defense operations, and incident management. He is a 30-year veteran of the Coast Guard, and has a Bachelor of Science in management from the Coast Guard Academy, 1977, a master's in human resource management with honors from Nova University, and a master's in strategic studies from the Naval War College—College of Naval Warfare—in 1996.

Each of our witnesses' written statements will be entered in the record in its entirety, and I ask each witness to summarize his testimony in 5 minutes or less. And to help you stay within that time, there is a lighted device in front of us, which will switch from green to yellow when you have 1 minute left, and we would ask you to conclude your testimony—finish your thought—but conclude your testimony when 5 minutes have expired.

We will begin with Mr. Brown.

**TESTIMONY OF DANA A. BROWN, DIRECTOR, FEDERAL AIR MARSHALL SERVICE, ASSISTANT ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Mr. BROWN. Good morning, Chairman Scott, Representative Gohmert, distinguished Members of the Committee. I am privileged to appear before you today to discuss the authority of the Federal

Air Marshal Service and the Transportation Security Administration of the Department of Homeland Security.

September the 11, 2001, forever transformed our Nation. In one moment we came face to face with a known enemy on American soil, on a chance condition threatening to our way of life. However, on that day something far greater than fear, something much stronger than despair took root: an unshakeable faith in our fellow citizens and our ideals in our Nation, and an unwavering determination to protect and preserve what we stand for as a country on virtue of the destruction, to guide our efforts in the fight against terrorism and the quest to preserve liberty; and I have my place of work at the Federal Air Marshal Service due to that set of beliefs.

Over the past 4 years, Air Marshal capability has expanded and contracted in reaction to hijack activity. Until 9/11, the Air Marshals consisted of less than 50 personnel who operated under the direction of the Federal Aviation Administration and flew mainly international missions. In the aftermath of 9/11, the Department of Homeland Security was envisioned, formed, and is now in operation—Federal Air Marshal Service has been a challenging and rewarding undertaking.

While we have come a long way since then, we still have some distance to go. I was fortunate to be named as the director of the Federal Air Marshal Service a little over 2 years ago. Since that time, one of my goals has been to build on the accomplishments of the former director who did an outstanding job in creating a full-fledged law enforcement organization consisting of thousands of personnel in less than 1 year—is complete and the old condition stabilizes, my goal to building success—blueprint for the future.

Thank you, sir.

Mr. SCOTT. Thank you.

Mr. Self?

**TESTIMONY OF JEFFREY D. SELF, CHIEF, SOUTHWEST BORDER DIVISION, OFFICE OF BORDER PATROL, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Chief SELF. Chairman Scott, Ranking Member Gohmert, and distinguished Subcommittee Members, it is an honor to have the opportunity to appear before you today. My testimony this morning focuses on law enforcement operations of CBP as well as partnership with other Federal agencies to guard our Nation's borders against terrorists and their instruments of terror.

Established in 2003, CBP is a consolidated agency brought together to protect America's front line from terrorism while facilitating legitimate trade and travel along our Nation's border. The agency unites in inspectional work forces and broad border authorities of the U.S. customs, Key West immigration, animal and plant health and inspections services and the entire U.S. Border Patrol.

The agency manages 326 ports of entry and 144 border patrol stations within 20 sectors to secure almost 6,000 miles of border with Canada and Mexico, and 95,000 miles of shoreline. On a typical day in fiscal year 2007, the law enforcement jurisdiction of the agency executed 70 arrests of criminals at ports of entry, 2,400 illegal aliens between the ports, intercepted 84 fraudulent documents

and seized over 7,300 pounds of narcotics at and between ports of entry.

CBP has authority to enforce Federal criminal law, codified in title 18 and elsewhere in the U.S. Code. CBP works in coordination with U.S. Immigration and Customs Enforcement, U.S. Coast Guard, U.S. Drug Enforcement Administration, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, and Firearms, and other Federal agencies to enforce Federal criminal law at the border.

CBP officers and border patrol agents may arrest without a warrant for any Federal offense, including violations of title 18 and title 19, if the offense is committed in the officer or agent's presence. The officer and agent may also arrest without a warrant for any Federal felony that occurs outside the officer or agent's presence if the officer or agent has reasonable grounds to believe the person committed the felony.

Common immigration-specific violations of title 18 at the border include false claim to U.S. citizenship, fraud involving identity documents reproduction and fraud involving citizenship documents forgery or false use of a passport and false statements to a Federal officer. Other common violations of title 18 that lead to arrest by CBP are: for an assault on a Federal officer, and—possession of a firearm.

CBP has primary responsibility for enforcing the immigration laws of title 8 and the custom laws of title 19 at the border. The Immigration and Nationality Act within title 8 has its own criminal provisions. In addition, violations of title 8 may also form the basis of a title 18 prosecution. Common prosecution based on violations of the INA discovered by CBP at the border are: alien smuggling, illegal entry into the U.S., and illegal reentry into the U.S.

Many prosecutions result from the identification of arrested subjects through the IAPS system. The IAPS system resulted in over 144,000 hits this past fiscal year for crimes ranging from homicide, sexual assault, robbery, dangerous drugs, and other misdemeanor crimes.

In order to ensure these laws, CBP—in order to enforce these laws, CBP utilizes partnership with other Federal agencies. A key example of these partnerships are Integrated Border Enforcement Teams and Operation Uniforce.

From January 13, 2008 to January 26, 2008 border patrol agents from the New Orleans sector conducted Operation Uniforce to interdict alien and narcotic smugglers. These multi-agency operations were conducted utilizing traffic observation units on Interstate 20, operating between the Mississippi River and the city of Jackson, Mississippi.

Forty border patrol agents and two canine handlers from the New Orleans Sector conducted operations with the Office of Field Operations Special Response Team members, agents from the ICE Detention and Removal Office, CBP Air and Marine, the Mississippi Highway Patrol, the Rankin, Madison, and Hines County Sheriff's Departments, along with the Pearl and Clinton Police Department.

The intelligence data that was gathered during Operation Uniforce provided valuable insight into identifying the criminal organizations that use the I-20 corridor for human and narcotic traf-

ficking. Through law enforcement operations and partnerships with other local, State, and Federal foreign and international agencies, CBP front line officers and agents will continue to protect America from the terrorist threat while also accomplishing our traditional missions in immigration, customs, and agriculture.

I would like to thank the Chairman and Members of the Subcommittee for the opportunity to present this testimony today and for your continued support of DHS and CBP. We will be happy to respond to any questions that you may have.

Mr. SCOTT. Thank you, Mr. Self.

Mr. Parmer?

**TESTIMONY OF RAYMOND R. PARMER, DEPUTY DIRECTOR  
FOR INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS EN-  
FORCEMENT, DEPARTMENT OF HOMELAND SECURITY,  
WASHINGTON, DC**

Mr. PARMER. Good morning, Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Committee. It is my privilege to appear before you today to discuss U.S. Immigration and Customs Enforcement's criminal law enforcement responsibilities.

ICE has broad responsibilities and we are leveraging them by aligning our authorities with the risks that face the Nation today. In this regard, ICE enacted a multi-year strategy of improving immigration enforcement through efficient management, focused enforcement efforts to target the most dangerous illegal aliens, and worksite enforcement initiatives that target employers who defy immigration law, thus reducing the pull of jobs magnets that draw illegal workers across the border in search of employment.

At the same time, ICE stepped up the battle against financial crime and the exploitation of legitimate financial networks by criminal organizations using methods to earn, move, and store illicit funding needed to support their criminal enterprises. Our risk-based approach extends from interior immigration enforcement, in which we are prioritizing criminal aliens and fugitives, to the application of our customs fraud authorities to prevent the importation of tainted commodities and counterfeit pharmaceuticals.

This approach shapes our methods to target drug and other contraband smuggling with financial authorities and international partnerships, and it means we continue to thwart the illegal export of weapons and sensitive technology.

To target some of the most dangerous criminals and sophisticated criminal organizations, ICE has developed robust initiatives to enforce our immigration laws in the interior, including programs that specifically target child predators and gang members, ensure compliance on the part of those who visit the U.S. for school or simply to tour, target alien absconders, who are fugitives who have failed to comply with a lawful judicial order to leave the country, and dismantle the infrastructure that supports illicit immigration such as illegal employment and the fraudulent document trade.

We are also working particularly close with State and local law enforcement partners. Recognizing that there are more than 775,000 State and local law enforcement officers in the country, ICE is leveraging our authorities to develop partnerships under the

ICE ACCESS program, including cross-designation programs such as 287(g) and customs title 9 authority.

While the immigration authorities—I am sorry, while the Immigration Enforcement initiatives I have described most often relate to people wanting to come into our country, another key risk we guard against is efforts to take sensitive technology and arms out. In fiscal year 2007, arms and strategic technology investigations resulted in 188 arrests, 178 indictments, and 127 convictions for export-related violations—more than any other U.S. Federal law enforcement agency.

Other dangers are less obvious. Traditional customs fraud, in many cases, constitutes serious and unrecognized public health risks. Take, for example, Operation Guardian, an ongoing ICE-led operation with CBP, the FDA, and Consumer Product Safety Commission, to investigate imports of substandard, tainted, and dangerous products from China.

The operation to date has resulted in the seizure of more than 59,000 tubes of diethylene glycol and bacteria-laden toothpaste bound for U.S. markets and the initiation of joint U.S.-People's Republic of China investigations. Diethylene glycol, by the way, is a toxic chemical used to make antifreeze. And this is one of many similar cases involving tainted goods which would otherwise be on store shelves just waiting for purchase by American families.

As I mentioned, the risk-based approach also shapes our methods to target drug and other contraband smuggling. With only 25 percent of our special agents authorized to conduct drug smuggling investigations, ICE conducted investigations resulting in the seizure of 232,000 pounds of cocaine, 1.3 million pounds of marijuana, as well as 5,900 narcotics-related convictions.

Using our financial tools and international partnerships, we are pushing out beyond our borders. Our Trade Transparency Units represent unique relationships with foreign nations that allow us to share import and export data to identify trade anomalies that suggest money laundering. Our agents, thanks to these partnerships, are effectively identifying schemes designed to hide the illicit proceeds from the drug trade and sale of dangerous consumer goods, foreign tax fraud, and other transnational criminal activity.

This kind of approach—focusing on risk and going after the money—yields real results. Since 2003, ICE has seized more than \$600 million in cash and monetary instruments, and more than \$580 million worth of real property, vessels, aircraft, artwork, vehicles, and jewels.

ICE's Federal Protective Service, responsible for policing, securing, and ensuring a safe environment in which Federal agencies can conduct their business, seized more than 760,000 prohibited items last year. They investigated hundreds of threats posed against the more than 8,800 Federal facilities and millions of visitors to Federal buildings nationwide.

Our work can be dangerous and difficult, but we tackle our responsibilities each day with pride and professionalism. I appreciate the opportunity to appear before you today on behalf of ICE, and look forward to answering your questions.

Mr. SCOTT. Thank you very much.

Mr. Stenger?

**TESTIMONY OF MICHAEL STENGER, ASSISTANT DIRECTOR,  
OFFICE OF INVESTIGATIONS, UNITED STATES SECRET SERV-  
ICE, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON,  
DC**

Mr. STENGER. Yes. Good morning, Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Subcommittee. I would like to thank you for the opportunity to testify today on the investigative responsibilities of the Secret Service. While the Service is perhaps best known for our protective responsibilities, we have a dual mission.

The Secret Service was established in 1865 to suppress the rampant counterfeiting of U.S. currency. Throughout our 142-year history, the Service has evolved and adapted to thwart attempts by both individuals and criminal organizations to exploit the Nation's financial infrastructure.

Today we investigate criminal violations relating to the counterfeiting of obligations and securities of the United States; financial crimes such as access device fraud, financial institution fraud, identity theft, and computer-based attacks on the Nation's financial payment systems and critical infrastructure.

To accomplish our mission, we have 139 domestic offices and 21 foreign offices located in 16 countries. We work closely with our Federal, State, and local law enforcement partners as well as other U.S. government agencies and foreign counterparts to maximize our efforts.

The Secret Service is proud of its role and success in protecting U.S. currency. Last year, more than 2,200 suspects were arrested for counterfeiting offenses, and over \$147 million in counterfeit currency was seized. The agency continues to adapt to the trends in counterfeiting, which have been influenced in recent years by computer-based technologies.

Widespread use of personal computers and advancements in digital printing technologies have provided more individuals the opportunity to manufacture counterfeit money. Approximately 58 percent of the counterfeit currency passed domestically in 2007 was produced using digital printing.

In our role of safeguarding the Nation's critical financial infrastructure, we have a long history of protecting American consumers and the financial industry from fraud. With the passage of legislation in 1984, we were provided authority for the investigation of access device fraud and concurrent authority with other law enforcement agencies in identity theft crimes.

In recent years, the combination of the information revolution and the effects of globalization have caused the investigative mission of the Secret Service to evolve. Through our work in the areas of financial and electronic crime, we have developed particular expertise in the investigation of financial crimes, cyber crimes and computer intrusions.

In fiscal year 2007, agents arrested over 4,300 suspects for financial crimes, who were responsible for over \$690 million in actual fraud loss. The most recent trend is the use of computers and the Internet to launch cyber attacks targeting citizens and financial institutions. Cyber criminals have become adept at stealing victims' personal information through the use of phishing emails, account

takeovers, malicious software, hacking attacks, and network intrusions resulting in data breaches.

This stolen information is often sold in bulk quantities through illicit Internet Websites known as carding portals. We have established a national network of 29 financial crimes task forces and 24 electronic crimes task forces in cities throughout the United States. These task forces leverage the combined resources of law enforcement as well as technical experts from academia and the private industry.

Further, the Secret Service will have a key role in the implementation of the Administration's cyber-security activities, as outlined in the recent presidential directive addressing cyber-security policy. As I have highlighted in my statement, the Secret Service has adapted to the constantly evolving criminal environment. We continue to aggressively investigate all offenses within our purview, and are committed to our mission of protecting the integrity of U.S. currency and safeguarding the Nation's critical financial infrastructure and financial payment systems.

This concludes my prepared statement. Thank you again for the opportunity to testify on behalf of the Secret Service. I am pleased to answer any questions.

Mr. SCOTT. Thank you very much.  
Admiral Justice?

**TESTIMONY OF REAR ADMIRAL WAYNE JUSTICE, ASSISTANT COMMANDANT FOR CAPABILITY AND DIRECTOR OF RESPONSE POLICY, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Admiral JUSTICE. Good morning, Chairman Scott, Ranking Member Gohmert, and distinguished Members of the Subcommittee. It is a privilege for me to testify before you today about the maritime law enforcement mission of the United States Coast Guard. I feel passionately about this mission, having spent nearly 30 years deeply involved in it.

While the written testimony covers the full spectrum of Coast Guard's global law enforcement activities, for my oral testimony today I would like to share with you some highlights of how drug and alien smugglers continuously adapt their technologies and tactics, and then ask your help in adapting our criminal law to better counter two of the most dangerous activities facing maritime law enforcement officers in our Nation: self-propelled semi-submersible smuggling vessels and maritime alien smuggling.

The influx of illegal drugs remains one of America's greatest maritime security threats. One of the emerging and most significant threats we face in transit zones today are manned and unmanned self-propelled semi-submersible, SPSS, vessels that transport multi-ton loads of cocaine and other illicit cargo bound for the United States.

SPSS vessels are watercraft of unorthodox construction, capable of putting much of their bulk under the surface of the water, making them difficult to detect. You can see images of recently interdicted SPSS vessels on the posters here, and we have provided the Committee staff compelling video from a case just 2 weeks ago that I urge you to watch.

SPSSs typically carry up to five crew and four to six tons of illegal cargo at speeds up to eight knots. SPSS vessels encountered by the Coast Guard are stateless vessels built in the jungles of South America with no legitimate use. Their crews typically abandon and sink the vessels and contraband when detected by law enforcement in order to evade U.S. prosecution for drug trafficking.

Although U.S. interdiction forces nearly always capture imagery of detected SPSS and the crews abandoning them before they sink, attempting to access and recover contraband before a SPSS scuttles is very dangerous and almost impossible. The SPSS vessel is an attempt to avoid both detection and consequences—if territorial operation of and embarkation in stateless SPSS vessels was a criminal offense in title 18 of the United States Code, then U.S. interdiction forces and U.S. attorneys would have the necessary tools to combat the SPSS threat even in the absence of recovered drugs or other contraband. The Coast Guard has closely coordinated with the Department of Justice to draft an amendment to title 18 to address this concern.

We have briefed Committee staff on this amendment, which is attached to my written statement, and urge Committee action on, and House passage of, the amendment as soon as possible. The Coast Guard projects the possibility of 85 SPSS events, carrying possibly 340 metric tons of cocaine, during fiscal year 2008. We need your help now to counter this dangerous emerging threat.

As the lead Federal agency in maritime law enforcement, the Coast Guard is also responsible for enforcing immigration laws at sea. Thousands of people try to enter our country illegally every year using maritime routes in dangerously overloaded, unseaworthy, or otherwise unsafe vessels. This is why the Coast Guard migrant-interdiction operations are as much humanitarian efforts as they are law-enforcement missions.

Although Coast Guard has interdicted migrants of various nationalities through the Western Hemisphere, the primary illegal immigration threat comes from Cuba, Haiti, and the Dominican Republic. In the Mona Pass between Puerto Rico and the Dominican Republic, deployment of mobile biometrics capability on 110-foot patrol boats and robust interagency support have contributed significantly to a reduction in the flow of illegal migration by nearly 50 percent.

The referral of 120 cases of criminal aliens identified at sea through mobile biometrics, including 33 aggravated felons, 77 aliens illegally attempting reentry after deportation, seems to have stemmed the flow in what was the single largest migrant smuggling vector before biometrics-based prosecutions. This project would not have been possible without the full partnership of US-VISIT, CBP, ICE, Border Patrol, plus the U.S. Attorney's Office in San Juan, Department of State, and the Dominican Navy.

Like drug traffickers, migrant smugglers profit by adapting their tactics and acquired technical innovations—particularly high-speed multi-engine go-fast vessels. The enterprise brings thousands of undocumented aliens to the United States for the price of up to \$10,000 a head. Despite a 35 percent increase in the number of cutter and resource hours targeted against migration in the Florida Straits, migration continues to increase in that vector. The effec-



tiveness of any interdiction model is dependant on our ability to deliver consequences to smugglers through prosecution and other action.

I would like to thank the House Judiciary Committee for hearing and acting on our request in 2007 for enhanced offenses involving maritime alien smuggling. The statutory amendment to 18 U.S.C. 2237, developed by the Committee last fall and now appearing in title VI of our Auth Act, will be vital to Coast Guard mission accomplishment.

That amendment would be strengthened further by making it unlawful to smuggle any person or contraband into the United States and permitting both civil and criminal forfeiture of property. We would also like the provision to ensure that any sentence under 2237 runs consecutively, not concurrently.

With these additions, title VI, if enacted this year, would also assist us and U.S. attorneys to achieve these operational requirements. With your help, sirs, we can reduce the flow of illegal aliens and illicit goods into our country by ensuring that the risks and consequences far outweigh the possible benefits.

Thank you for this opportunity to testify, and I am pleased to answer questions at this time.

[The joint prepared statement of the United States Department of Homeland Security follows:]

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JOINT PREPARED STATEMENT OF THE UNITED STATES DEPARTMENT  
OF HOMELAND SECURITY

Good morning, Chairman Scott, Ranking Member Gohmert, and distinguished members of the subcommittee. We would like to thank you for the opportunity to testify today on the law enforcement and investigative responsibilities of the Department of Homeland Security (DHS)—specifically the responsibilities of the United States Secret Service, the Transportation Security Administration (TSA), the United States Customs and Border Protection (CBP), the United States Immigration and Customs Enforcement (ICE), and the United States Coast Guard. As you will see, DHS has utilized its authorities to protect our nation from dangerous people, protect our critical infrastructure, and protect our nation from dangerous goods.

U.S. SECRET SERVICE

While the Secret Service is perhaps best known for protecting the president, vice president, and other high-ranking public officials, the Secret Service originated as an investigative law enforcement agency. The Secret Service was established in 1865 to suppress the rampant counterfeiting of U.S. currency. Since then, the Secret Service's investigative mission has evolved and the agency has adapted to thwart attempts by both individuals and criminal organizations to exploit the nation's financial infrastructure through varied financial crimes. Currently, the Secret Service investigates criminal violations relating to the counterfeiting of obligations and securities of the United States (18 U.S.C. §§ 470–474); financial crimes such as access device fraud (18 U.S.C. § 1029), financial institution fraud (18 U.S.C. § 1344), and identity theft (18 U.S.C. § 1028); cyber crime such as network intrusions, malware, and online organized crime (18 U.S.C. § 1030; and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure (18 U.S.C. § 1030).

To accomplish its investigative mission, the Secret Service operates 139 domestic offices (including domicile offices) and 21 foreign offices in 16 countries. The agency works closely with federal, state, and local law enforcement entities, as well as other U.S. government agencies and foreign police counterparts to maximize its efforts.

*Counterfeiting:*

The Secret Service is proud of its role and success in protecting the worldwide integrity of U.S. currency. Last year, the Secret Service arrested more than 2,200

suspects for counterfeiting offenses and helped to remove over \$147 million in counterfeit U.S. currency from circulation. The agency continues to adapt to the trends in counterfeiting, which have been influenced in recent years by computer-based technologies. The widespread use of personal computers and advancements in digital printing technology has provided more individuals the opportunity to manufacture a passable counterfeit note with relative ease. Approximately 58% of the counterfeit currency passed domestically in FY 2007 was produced using digital printing means, compared with less than 1% in FY 1995.

*Financial Fraud and Electronic Crimes:*

In our role of safeguarding the nation's critical financial infrastructure, the Secret Service has a long history of protecting American consumers and the financial industry from fraud. With the passage of legislation in 1984, the Secret Service was provided authority for the investigation of access device fraud, including credit card and debit card fraud, and parallel authority with other law enforcement agencies in identity theft cases. In recent years, the combination of the information revolution and the effects of globalization have caused the investigative mission of the Secret Service to evolve.

Through our work in the areas of financial and electronic crime, the Secret Service has developed particular expertise in the investigation of identity theft, false identification fraud, credit card fraud, debit card fraud, check fraud, bank fraud, online back account and investment portfolio takeovers, cyber crime, malware, and computer network intrusions. In Fiscal Year 2007, Secret Service agents arrested over 4,300 suspects for financial crimes violations. These suspects were responsible for approximately \$690 million in actual fraud loss to individuals and financial institutions.

In fact, the Secret Service has observed a marked increase in the quantity and complexity of financial crimes in recent years—particularly offenses involving identity theft and access device fraud. The recent trend observed by law enforcement is the use of computers and the Internet to launch cyber attacks targeting citizens and financial institutions. Cyber criminals have become adept at stealing victims' personal information through the use of phishing emails, account takeovers, malicious software, hacking attacks, and network intrusions resulting in data breaches.

This stolen information is often sold in bulk quantities through illicit Internet portals. These portals, or "carding websites," can be likened to online bazaars where the criminal element converges to conduct their business. The websites vary in size, from just a few dozen members to more popular sites which boast memberships of approximately 8,000 users. These websites are often composed of separate forums which are moderated by notorious members of the cyber crime community. Within these websites, cyber criminals can buy, sell, and trade malicious software; spamming services; hacking services; credit, debit, and ATM card data; and personal identification and bank account information. The Secret Service is currently conducting approximately 15 online undercover investigations targeting domestic and international groups that are using malicious web-based forums to trade stolen information.

The Internet has enabled criminal groups involved in financial crimes to routinely operate in a multi-jurisdictional environment. By working closely with other federal, state, and local law enforcement representatives, as well as international police agencies, the Secret Service is able to provide a comprehensive network of information sharing, resource sharing, and technical expertise that bridges jurisdictional boundaries. This partnership approach to law enforcement is vital to our criminal investigative mission.

*Financial Crimes/Electronic Crimes Task Forces:*

The Secret Service has established a national network of 29 Financial Crimes Task Forces and 24 Electronic Crimes Task Forces in major metropolitan areas across the United States. These task forces leverage the combined resources of our federal, state, and local law enforcement partners, as well as technical experts from academia and private industry, in an organized effort to combat threats and effectively investigate crimes directed at our critical infrastructure. Collaboration between law enforcement and the private sector is critical to our preventative approach to financial and electronic crimes. We also build partnerships with academia to ensure that law enforcement is on the cutting edge of technology by leveraging the research and development capabilities of teaching institutions and technical colleges.

To provide our special agents with the advanced skills needed to identify and address cyber vulnerabilities, the Secret Service established the Electronic Crimes Special Agent Program (ECSAP) in 1987. Agents trained through ECSAP are com-

puter specialists, qualified to conduct network intrusion investigations and forensic examinations of various types of electronic evidence, including computers, personal data assistants (PDAs), telecommunications devices, electronic organizers, and other electronic media. Currently, the Secret Service has approximately 770 ECSAP-trained agents assigned to more than 85 offices worldwide. We are continuing to expand this program and, by the end of FY 2008, the Secret Service expects to have over 1,000 ECSAP-trained agents.

Further, the Secret Service will have a key role in the implementation of the Administration's cybersecurity activities, as outlined in the recent Presidential directive addressing cybersecurity policy.

The Secret Service has adapted to the constantly evolving criminal environment. We will continue to aggressively investigate all offenses within our jurisdiction to protect consumers and financial institutions. The Secret Service is committed to our mission of protecting the worldwide integrity of U.S. currency and safeguarding the nation's critical financial infrastructure.

#### TRANSPORTATION SECURITY ADMINISTRATION

Prior to 9/11, the air marshal program consisted of less than 50 personnel who were classified as civil aviation security specialists rather than law enforcement officers. These personnel operated under the direction of the Federal Aviation Administration and primarily flew international missions. In the aftermath of 9/11, the Administration and Congress agreed that a stronger federal air marshal program was required. First under the Department of Transportation within TSA, and now within DHS, the Federal Air Marshal program is the largest such program in the world and has evolved into a critical layer of aviation security. The Federal Air Marshal Service (FAMS) today has not only expanded in size, but has been enhanced in quality by requiring all air marshals to meet the high standards associated with an 1801 law enforcement series. Today, Federal Air Marshals fly on thousands of domestic and international missions, conduct valuable surveillance within airport perimeters, and participate in joint law enforcement efforts with other agencies.

TSA's office of Law Enforcement/FAMS enhanced this operation and promotes confidence in our Nation's civil transportation systems through the effective risk-based strategic deployment of Federal Air Marshals and other law enforcement resources in both air and land-based mission assignments. The organization's primary focus is to detect, deter, and defeat terrorist or other criminal hostile acts targeting U.S. air carriers, airports, passengers, crew, and, when necessary, other transportation modes within the Nation's general transportation systems.

The authority for the Federal Air Marshals is found in Title 49 USC section 114(q)—Law Enforcement; section 44917(a)—Deployment of Federal Air Marshals; section 44903(d)—Authorizing Individuals To Carry Firearms and Make Arrests, and, most recently, PL 110–53, section 1303, which authorizes Federal Air Marshals to participate in Visible Intermodal Prevention And Response (VIPR) Teams.

In addition to the FAMS, the Office of Law Enforcement's resources conduct Joint Vulnerability Assessments (JVA) and Man Portable Air Defense Systems (MANPADS) assessments. The JVA is a joint effort undertaken by TSA and FBI with the purpose of assessing current and potential threats to commercial air transportation facilities within the United States. TSA has committed to conducting MANPADS vulnerability assessments—evaluations of close-range threats such as shoulder-fired missiles—at all of the largest airports on an annual basis. Also, the FAMS are full partners with the FBI's Joint Terrorism Task Force (JTTF). FAMS are assigned to every FBI field office JTTF (56) and the National JTTF as well.

The OLE/FAMS also operate a robust explosives detection canine program. TSA has met projections for FY07 with the deployment of a total of 422 canine teams in the aviation domain. Additionally, there are currently 56 teams deployed in the mass transit environment for a current total of 478 teams.

FAMS have participated in hundreds of TSA-led VIPR operations, where FAMS, TSA inspectors, transportation security officers, and any TSA assets assist federal agencies and local law enforcement responding to specific threats or high-risk situations aimed at the nation's transportation network. FAMS also began partnering with other DHS agencies towards forming and deploying task-organized VIPR teams utilizing the combined skill sets, resources, and expertise of DHS's seven major operating agencies. The FAMS have participated in all Departmental VIPR teams to date.

One of FAMS unique deployments includes our response following the unprecedented events surrounding Hurricane Katrina and the relief we provided to thousands of travelers who were trapped at the Louis Armstrong International Airport in New Orleans, while other residents inundated the airport in the aftermath of the

storm. With virtually no state or local law enforcement presence on the airport grounds, the few federal officials and employees of the TSA there were quickly overwhelmed.

The FAMS responded to this dire situation by activating a 24-hour crisis center during the evening hours of Thursday, September 1. Approximately 500 FAMS were then activated from 15 Field Offices. These FAMS traveled to New Orleans, restored and maintained security at Louis Armstrong International Airport for over three weeks, and ensured the safety of TSA personnel as well as the displaced residents on hundreds of humanitarian flights out of the stricken city.

The FAMS's unique capabilities were also exhibited in the early morning hours of August 10, 2006, when the FAMS strategically redeployed significant assets in reaction to the unfolding terrorist plot to detonate liquid explosives to be carried onto airplanes traveling to the United States from the United Kingdom. The FAMS were able to deploy quickly and efficiently to the United Kingdom to provide an additional layer of security onboard airplanes destined for the United States. The rapid deployment insured that international travelers were protected against any terrorist act that might be perpetrated in connection with the plot. Over a 30-day period, the FAMS's surge capacity enabled coverage of over 1500 flights between major airports in the United States and United Kingdom, utilizing more than 1,000 FAMS.

#### U.S. CUSTOMS AND BORDER PROTECTION

U.S. Customs and Border Protection (CBP) protects our nation's borders from terrorism, human and drug smuggling, illegal migration, and agricultural pests while simultaneously facilitating the flow of legitimate travel and trade.

As the nation's single unified border agency, CBP's mission is vitally important for the protection of the American people and the national economy. Nearly 44,000 CBP employees and law enforcement officers work in a variety of ways to secure the nation's borders both at and between the official ports of entry and also to extend our zone of security. CBP secures America's borders through three major law enforcement entities: Field Operations, Border Patrol, and Air and Marine.

CBP officers are responsible for enforcing over 400 laws for 40 agencies at the border, which govern both imports and exports of goods and entry and exit of persons and conveyances. To that end, CBP officers have the authority to enforce federal civil and criminal laws, carry firearms, and make arrests for offenses committed in their presence or for felony offenses where the officer has probable cause to believe the person committed the crime. CBP's enforcement of border-related laws is wide ranging, and CBP works closely with various other agencies or departments to enforce these laws, including U.S. Immigration and Customs Enforcement (ICE), U.S. Coast Guard, U.S. Drug Enforcement Administration, Federal Bureau of Investigations (FBI), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and other federal agencies. CBP works most closely with ICE, which acts, in most respects, as CBP's investigatory arm.

For example, under Title 18 of the U.S. Code, CBP often enforces non-immigration offenses such as smuggling, money laundering, child pornography, and criminal trademark infringement. Common immigration-specific violations of Title 18 at the border include false claims to U.S. citizenship, fraud involving identity documents, reproduction or fraud involving citizenship documents, forgery or false use of passports, and false statements to a federal officer. CBP is also often involved in arresting individuals for assault on a federal officer and felon in possession of a firearm.

CBP has primary responsibility for enforcing the immigration laws of Title 8 and the customs laws of Title 19 at the border. The Immigration and Nationality Act (INA), within Title 8, has its own criminal provisions. For example, under INA section 274, the acts of illegally bringing in, transporting, harboring, or encouraging someone to enter the United States at someplace other than a port of entry can result in serious felonies. In addition, violations of Title 8 may also form the basis of a Title 18 prosecution. Common prosecutions based on violations of the INA discovered by CBP at the border include alien smuggling, illegal entry into the U.S., illegal re-entry into the U.S., and importation of aliens for immoral purposes. CBP also enforces criminal provisions under Title 31; administers the currency and monetary instrument reporting requirement of Title 31; interdicts bulk cash smuggling; and enforces laws relating to imitation firearms in Title 15, Title 17 copyright infringement, exportations contrary to law in Title 22, including Trading with the Enemy Act violations of Title 50, and Arms Export Control Act violations in Title 22.

In order to enforce these laws, CBP utilizes partnerships with other federal agencies. A few examples of these partnerships are Operations Uniforce, the Public

Health Security and Bioterrorism Preparedness and Response Act of 2002 (BTA), and operations within the CBP Air and Marine (A&M).

From January 13, 2008 to January 26, 2008, Border Patrol Agents from the New Orleans Sector conducted Operation Uniforce to interdict alien and narcotic smugglers. This multi-agency operation was conducted utilizing traffic observation units on I-20 operating between the Mississippi River and the city of Jackson, Mississippi. Forty Border Patrol Agents and two canine handlers from the New Orleans Sector conducted the operation with Office of Field Operations (OFO) Special Response Team Members, agents from ICE's Detention and Removal Officers, CBP Air and Marine, the Mississippi Highway Patrol, the Rankin, Madison, and Hines County Sheriff's Departments, along with the Pearl and Clinton Police Departments. The intelligence data that was gathered during Operation Uniforce provided valuable insight into identifying the criminal organizations that use the I-20 corridor for human and narcotic trafficking.

The BTA authorized the U.S. Food and Drug Administration (FDA) to receive information regarding imports, enabling the agency to target shipments of food for human or animal consumption prior to arrival at U.S. ports of entry. The BTA provides CBP the opportunity to assist FDA with the prior notice requirements. CBP works jointly with FDA to augment an existing automated interface to institute a prior-notice reporting requirement with minimal disruption to the trade.

Under provisions of Title 18, CBP A&M operates in direct support of the Coast Guard, Secret Service, DEA, FBI, ATF, and other federal, state, and local law enforcement agencies. CBP A&M operates in support of DHS operations for CBP, ICE's Office of Investigation, and Federal Protective Service and Detention and Removal Operations. CBP A&M also provides critical air and marine support to other federal, state, and local law enforcement agencies, including the U.S. Secret Service, DEA, FBI, ATF, and the Coast Guard.

CBP A&M operates in support of multi-agency and international partnerships to deter and combat the threat of illegal activity. CBP A&M has developed skills in air and marine operations by providing training and vessel to vessel operations and the integration of air and marine assets under the establishment of a joint DEA/Columbian/CBP command center in Cartagena, Colombia, enabling the interdiction of maritime targets leaving northern Colombia.

Overall, CBP is responsible for guarding 7,000 miles of land border the United States shares with Canada and Mexico and 2,000 miles of coastal waters surrounding the Florida peninsula and off the coast of Southern California. The agency also protects 95,000 miles of maritime border in partnership with the United States Coast Guard.

To secure this vast terrain, more than 15,500 CBP Border Patrol agents and CBP Air and Marine agents, and approximately 20,000 CBP officers and agriculture specialists, together with the nation's largest law enforcement canine program, stand guard along America's front line.

- CBP officers protect America's borders at official ports of entry, while CBP's Border Patrol agents prevent illegal entry into the United States of people and contraband between the ports of entry.
- CBP Air and Marine, which manages the largest law enforcement air force in the world, patrols the nation's land and sea borders to stop terrorists and drug smugglers before they enter the United States.
- CBP agriculture specialists prevent the entry of exotic plant and animal pests, and confront emerging threats in agro- and bioterrorism.

While carrying out its priority anti-terrorism mission, CBP must also work to facilitate the movement of legitimate trade and travelers, as the agency processes all people, vehicles and cargo entering the United States. On a typical day in fiscal year 2007, CBP processed approximately 1.1 million passengers and pedestrians; 70,000 containers; 304,000 privately owned vehicles; and 83,000 shipments of goods approved for entry. Through law enforcement operations and partnerships with other federal, state, and local agencies, CBP's frontline officers and agents will continue to protect America from the terrorist threat while also accomplishing our traditional missions in immigration, customs, and agriculture.

#### U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

U.S. Immigration and Customs Enforcement (ICE) is the lead investigative federal agency for enforcing that nation's immigration laws under Title 8 of the United States Code, in addition to specific law enforcement authority found under Titles 18 and 19, among others. Some of the areas included in the enforcement of these laws are National Security, Public Safety, Commercial and Identity Fraud, Illegal Smug-

gling of Contraband, and Money Laundering. The merger of the legacy federal authorities now makes ICE the second most diverse law enforcement agency within the federal government. In 2003, the Office of Investigations started with a total of 5,190 agents. As of today, there are a total of 5,516 agents, although ICE plans to hire an additional 296 agents in 2008 and the President has asked for an additional 87 in 2009.

Given that ICE has such broad law enforcement and investigatory responsibilities, we leverage these responsibilities by aligning our authorities with the risks that face the nation today. ICE protects national security and upholds public safety by targeting terrorist organizations and other criminal networks that seek to exploit vulnerabilities in our immigration system, in international trade, in our financial networks, along our borders, at federal facilities, and elsewhere in order to do harm to the United States. The end result is a safer, more secure America.

In this regard, ICE enacted a multi-year strategy of improving immigration enforcement through more efficient management, focused enforcement efforts that target the most dangerous illegal aliens, worksite enforcement initiatives that target employers who defy immigration law, and reducing the pull of the “jobs magnet” that draws illegal workers across the border in search of employment. At the same time, ICE stepped up the battle against financial crime and the exploitation of legitimate financial networks by criminal organizations using methods to earn, move, and store illicit funding needed to support their criminal enterprises.

ICE’s risk-based approach shapes interior immigration enforcement, in which we are prioritizing everything from criminal aliens and fugitives to the application of our customs fraud authorities to prevent the importation of tainted commodities and counterfeit pharmaceuticals. This approach shapes our methods to target drug and other contraband smuggling with financial authorities and international partnerships—and it means that we continue to work to thwart the illegal export of weapons and sensitive technology.

To target some of the most dangerous criminals and sophisticated criminal organizations, ICE has developed robust initiatives to enforce our immigration laws in the interior, including programs that specifically target child predators and gang members, ensure compliance on the part of those who visit the U.S., target alien absconders—fugitives who’ve failed to comply with a lawful judicial order to leave the country—and dismantle the infrastructure that supports illicit immigration such as illegal employment and the fraudulent document trade.

For example, ICE created its Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center in FY06, and it has been integral to DHS’s effort to halt criminal activity by aliens. The DEPORT Center conducts interviews of inmates in remote prisons from a centralized location. Through the combined effort of the DEPORT Center and local ICE resources, coverage is provided to all 114 federal detention facilities. This ensures that criminal aliens are taken into ICE custody upon the completion of their federal sentences rather than being released into U.S. communities.

While ICE’s immigration enforcement initiatives most often relate to people wanting to come in to our country, another key risk we guard against is efforts to take sensitive technology and arms out. In FY 2007, arms and strategic technology investigations resulted in 188 arrests, 178 indictments, and 127 convictions for export-related violations—more than any other U.S. federal law enforcement agency.

ICE’s 287(g) program, authorized under the 1996 Immigration and Nationality Act, has emerged as a key partnership tool in allowing ICE to train state and local officers in immigration enforcement. Once in place, the 287(g) agreement allows ICE to delegate enforcement powers to state and local agencies, who serve as force multipliers in immigration enforcement in their communities. In August 2007, ICE announced the launch of the ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) program to expand the opportunities for law enforcement partnerships. Under the ACCESS program, ICE works with local officials to determine specific enforcement challenges and develop partnership plans that help fight document fraud, illegal immigration, gang activity or other critical law enforcement challenges.

Recognizing that there are more than 775,000 state and local law enforcement officers in the country, ICE is leveraging our authorities to develop partnerships under the ACCESS program and the cross designation programs such as 287(g) and customs.

ICE’s risk-based approach also shapes our methods to target drug and other contraband smuggling. ICE has developed a full cadre of investigative expertise—including undercover operations, use of confidential informants, wire intercepts, controlled deliveries, consensual monitoring, and electronic surveillance—to combat smuggling organizations. These smuggling organizations use every imaginable

method to smuggle contraband into this country, including the use of aircraft, automobiles, trucks, maritime vessels, backpacks, tunnels, and railways. Additionally, smuggling organizations infiltrate and use legitimate businesses and industries as mechanisms for smuggling illicit goods and narcotics into the United States.

In FY07, ICE conducted investigations resulting in the seizure of 232,000 pounds of cocaine and 1.3 million pounds of marijuana, as well as obtained 5,900 narcotics-related convictions. Using our financial tools and international partnerships, we are pushing out beyond our borders. Our Trade Transparency Units represent unique relationships with foreign nations that allow us to share import and export data to identify trade anomalies that suggest money laundering. Our agents, thanks to these partnerships, are effectively identifying schemes designed to hide the illicit proceeds from the drug trade and sale of dangerous consumer goods, foreign tax fraud, and other transnational criminal activity.

Other dangers from which ICE protects this nation are less obvious: Traditional customs fraud, in many cases, constitutes serious and unrecognized public health risks. Take, for example, Operation Guardian, an ongoing ICE-led operation with CBP, the FDA, and Consumer Product Safety Commission, to investigate imports of substandard, tainted, and dangerous products from the People's Republic of China. The operation to date has resulted in the seizure of more than 59,000 tubes of diethylene glycol- and bacteria-laden toothpaste bound for U.S. markets and the initiation of joint US/PRC investigations. Diethylene glycol is a toxic chemical used to make antifreeze. And this is one of many similar cases involving tainted goods which would otherwise be on store shelves just waiting for purchase by American families.

The Federal Protective Service, responsible for policing, securing, and ensuring a safe environment in which federal agencies can conduct their business, seized more than 760,000 prohibited items last year. They investigated hundreds of threats posed against the more than 8,800 federal facilities and millions of visitors to federal buildings nationwide.

ICE's approach—focusing on risk and going after the money—yields real results: since 2003, ICE has seized more than \$600 million in cash and monetary instruments, and more than \$580 million worth of real property, vessels, aircraft, artwork, vehicles, and jewels. ICE's law enforcement and investigatory work can be dangerous and difficult, but we tackle our responsibilities each day with pride and professionalism.

#### U.S. COAST GUARD

The Coast Guard has served as our nation's primary federal maritime law enforcement agency since the first Congress of the United States created the Revenue Cutter Service in 1790 to enforce maritime laws, interdict smugglers, and protect American shipping. The Coast Guard is one of the oldest organizations of the federal government and, until the Navy Department was established in 1798, we served as the nation's only Armed Force afloat. Today, the Coast Guard is the only Armed Service with statutory responsibility and authority for direct law enforcement action.

Since the beginning of the Republic, Congress has granted our Service expansive authority to board and inspect vessels at sea without particular suspicion. After the Civil War, Congress removed geographic limitations on our boarding authority and directed the Service to enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas, in addition to waters subject to the jurisdiction of the United States. This worldwide boarding authority, now codified in 14 U.S.C. §§ 2 and 89, is the foundation of the Coast Guard's maritime law enforcement mission. Coast Guard boarding activity is as critical to the national security and economy of the United States today as it was in 1790. Not unlike the boarding officers of the Revenue Cutter Service over 200 years ago, today's boarding officers lead teams, usually embarked in boats and sometimes delivered from helicopters, to "make inquiries, examinations, inspections, searches, seizures and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection and suppression of violations of laws of the United States."

The Coast Guard conducts an average of 190 boardings each day around the world. The daily fare of Coast Guard assets and boarding teams includes drug smuggling, alien smuggling, illegal incursions into the U.S. Exclusive Economic Zone, breaches of fisheries and living marine resources laws, violations of boating safety and navigation regulations, substance abuse while operating vessels, and environmental crimes.

The influx of illegal drugs is one of America's greatest maritime security threats. The Coast Guard is the lead federal agency for maritime drug interdiction in the

transit zone—a six million square mile area roughly the size of the continental United States including the Caribbean, Gulf of Mexico, and Eastern Pacific—and shares lead responsibility for maritime threats within U.S. territorial waters with U.S. Customs and Border Protection. The Coast Guard's mission is to reduce the supply of drugs from the transit zone, originating in South America, by denying smugglers the use of maritime, as well as air routes and conveyances. In order to overcome the “tyranny of distance,” the Coast Guard depends on technological innovation, partnerships with other federal agencies, and countries and actionable intelligence.

One example of technological innovation is the broad expansion of armed counterdrug helicopter capabilities used to disable fleeing vessels or to compel them to stop (airborne use of force (AUF)). The Coast Guard operates a special armed helicopter squadron of HH-65C helicopters, which has been tremendously effective at interdicting elusive, high speed go-fast vessels. United Kingdom (U.K.) Royal Navy ships are also deploying to the Caribbean Sea with U.S. Coast Guard law enforcement detachments who support the U.K.'s armed helicopters, and U.S. Navy helicopters operate with Coast Guard gunners on board Navy warships in the Caribbean and Eastern Pacific. The overwhelming success of AUF has caused drug trafficking organizations (DTOs) to shift tactics, using smaller go-fasts with contraband concealed within the construction and avoiding the most direct deep water routes between departure point and destination. DTOs have also been driven to the littorals along Central America where they are more susceptible to coastal State interdiction forces.

The Coast Guard relies on international and interagency partnership to complete its missions. One example of this is the Joint Interagency Task Force (JIATF) South, which is responsible for directing interagency detection, monitoring and sorting of air and maritime drug smuggling events; fusing intelligence activities; and planning and conducting flexible operations within their respective joint operating area. This enables the Coast Guard to interdict and disrupt drug smuggling events in the transit zone. Every department and agency with a drug interdiction responsibility and role participates in making JIATF-South an extremely effective and efficient operation. JIATF South also utilizes foreign liaison officers from 11 different countries to facilitate transnational cooperative counterdrug efforts.

One of the emerging and most significant threats we face in maritime law enforcement today is manned and unmanned self-propelled semi-submersible (SPSS) vessels that transport multi-ton loads of cocaine and other illicit cargo bound for the United States. SPSS vessels are watercraft of unorthodox construction capable of putting much of their bulk under the surface of the water, making them difficult to detect. SPSS are typically less than 100 feet in length and carry up to five crew and 12 metric tons of illicit cargo (4–6 tons typically) at speeds of up to eight knots. SPSS vessels can travel from the north coast of South America to the southeastern U.S. without refueling. According to the Consolidated Counter Drug Database (CCDB), 23 SPSS drug smuggling events occurred between January 2001 and September 2007. Between October 1, 2007 and February 1, 2008, the CCDB reported an unprecedented 27 SPSS events that successfully delivered an estimated 111 metric tons of cocaine.

The SPSS vessels encountered by the Coast Guard are stateless vessels built in the jungles of South America with no legitimate use. They are built for stealth and the capability to rapidly scuttle. Their crews typically abandon and sink the vessels and contraband when detected by law enforcement in order to evade U.S. prosecution for drug trafficking. Although U.S. interdiction forces nearly always capture imagery of detected SPSS and the crews abandoning them before they sink, attempting to access and recover contraband before a scuttled SPSS sinks is very dangerous and often impossible.

If operation and embarkation in an SPSS were illegal, U.S. interdiction forces and U.S. Attorneys would have the necessary legal tools to combat the SPSS threat even in the absence of recovered drugs or other contraband. Criminalizing the operation of SPSS vessels on international voyages would improve officer safety, deter the use of these inherently dangerous vessels, and facilitate effective prosecution of criminals involved in this treacherous and emerging trend.

The Coast Guard has closely coordinated with the Department of Justice to draft an amendment to Title 18, United States Code, to address this concern. We have already briefed committee staff on this amendment, and urge Committee action on, and House passage of, the amendment as soon as possible. The Coast Guard projects 85 SPSS events carrying 340 metric tons of cocaine during FY 2008, so we need your help now to counter this dangerous emerging threat.

Drug trafficking innovation is, of course, not limited to SPSS vessels. In 2007, the Coast Guard interdicted five separate vessels carrying a combined 21.5 MT of co-



caine concealed in liquid form. “Liquid cocaine” consists of cocaine paste and base dissolved, usually in fuel oil, and concealed within tanks or holds onboard smuggling vessels. This smuggling tactic allows smugglers to quickly jettison the illicit cargo into the sea when encountered by law enforcement assets. To combat this threat, the Coast Guard, with our partners at ICE, the Drug Enforcement Administration (DEA), JIATF South, and PANEX, has developed procedures for the detection, identification, and preservation as evidence of liquid cocaine. Additionally, the Coast Guard has used advanced interdiction tactics to board and secure smuggling vessels to prevent the crews from destroying evidence or scuttling vessels.

As we turn to the Coast Guard’s alien maritime interdiction operations, we would like to thank the House Judiciary Committee for hearing and acting on our request in 2007 for enhanced offenses involving maritime alien smuggling. Once enacted, the statutory amendment to 18 U.S.C. § 2237, developed by the Committee last fall and now appearing in Title VI of the Coast Guard Authorization Act, H.R. 2830, will be vital to Coast Guard mission accomplishment.

As the lead federal agency for maritime law enforcement, the Coast Guard is responsible for enforcing immigration laws at sea. Thousands of people try to enter this country illegally every year using maritime routes, many via dangerous smuggling operations in dangerously overloaded, unseaworthy, or otherwise unsafe vessels. The flood of undocumented migrants in boats onto America’s shores is both a threat to human life and a violation of U.S. and international laws. Coast Guard migrant-interdiction operations are as much humanitarian efforts as they are law-enforcement missions. In fact, the majority of Coast Guard migrant interdiction cases begin as search and rescue missions.

The primary illegal migration threat comes from Haiti, the Dominican Republic, and Cuba; however, the Coast Guard has interdicted migrants of various nationalities throughout the Western Hemisphere. Successful illegal immigration potentially costs U.S. taxpayers billions of dollars each year in social services. The Coast Guard’s mission is to interdict undocumented aliens as far from U.S. shores as possible and return them to their countries of nationality or origin. Swift repatriation deters many potential migrants and minimizes costly processes arising from illegal entry into the United States. In addition to relieving our citizens of this financial burden, the Coast Guard’s efforts help to support legal immigration systems. Protection from political persecution and torture are also important concerns for the U.S. During the course of migrant interdictions, Coast Guard crews may encounter migrants requesting protection from persecution or torture. U.S. Citizenship and Immigration Services and the Department of State Bureau of Population, Refugees and Migration establish policies in this area and handle all potential protection cases arising from interdiction at sea.

The Coast Guard relies on technological innovation and partnerships with other federal agencies and countries to counter illegal alien smuggling. In the Mona Pass between Puerto Rico and the Dominican Republic, the deployment of mobile biometrics capability on 110-foot patrol boats and robust interagency support have resulted in a reduction in the flow of illegal migration by nearly 50 percent. The referral of 118 cases of criminal aliens identified at sea through mobile biometrics, including 33 aggravated felons and 77 aliens attempting to illegally re-enter the U.S. after deportation, seems to have stemmed the flow in what was the single largest migrant smuggling vector before biometrics-based prosecutions. This project would not have been possible without the full partnership of the DHS US-VISIT program, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the U.S. Attorney’s Office in San Juan, the Department of State, and the Dominican Navy.

Similar to drug traffickers, migrant smugglers also profit from technological innovations—particularly high-speed, multi-engine go-fast boats. Go-fast smuggling vessels are replacing rafts and rusticas as the preferred mode of transportation due to the increased chance of success. We estimate that the rate of success for a raft or rustica is generally less than 25 percent, and never better than 50 percent. By comparison, the rate of success for a go-fast is estimated at 70 percent. The multimillion dollar human smuggling enterprise brings thousands of undocumented aliens to the U.S. at a price of up to \$10,000 a head. Despite a 35 percent increase in the number of cutter and aircraft resource hours targeted against illegal migration in the Florida Straits, migrant flow continues to increase in that vector. The transition to go-fasts constitutes a significant challenge for interdiction assets.

The effectiveness of any alien interdiction model is dependant upon the ability to deliver consequences to smugglers through prosecution or other action. It is imperative that we secure more effective prosecution tools, including the closure of loopholes that currently impede investigation and consequence delivery, longer sentences, special seizure, and forfeiture provisions for vessels outfitted for smuggling.

We must also enhance sentences for vessels that fail to stop while engaged in alien smuggling.

The President's Maritime Operational Threat Response (MOTR) Plan provides for coordinated U.S. Government response to threats against the U.S. and its interests in the maritime domain by establishing roles and responsibilities enabling rapid and decisive response. The Coast Guard, as the Nation's leading maritime law enforcement agency, fulfills DHS's role as one of the principal MOTR agencies in the maritime domain. The Coast Guard brings broad law enforcement and military authorities, planning, and execution skills to operations requiring interagency coordination through the MOTR process in support of both maritime law enforcement and homeland security missions. The operations can include the deployment of integrated and adaptive capabilities (including use of force) required to locate, identify, intercept, apprehend, exploit, and, when necessary, defeat maritime threats. We use the MOTR process daily to engage and coordinate with our domestic interagency partners and with our foreign maritime law enforcement partners on drug, migrant, piracy, and fisheries cases.

The links between place, crime, control measures, and national identity are becoming more complicated—especially at the border. To a greater extent than ever before, crime and control measures are not always linked to a common national territory. Instead, criminals often exploit international borders, turning the seams between sovereigns into operational barriers for law enforcement. The Coast Guard's unique authorities, capabilities, competencies, and partnerships, foreign and domestic, enable the Coast Guard along with our fellow Department of Homeland Security agencies, to consistently and effectively enforce maritime laws, interdict smugglers and drug traffickers, and protect American resources.

#### CONCLUSION

Thank you again for this opportunity to testify on behalf of the Department of Homeland Security's law enforcement and investigatory responsibilities. Due to the breadth of the hearing, this written statement necessarily only outlines some of the important responsibilities that DHS fulfills in protecting this great nation. We will be pleased to answer any questions at this time.

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Mr. SCOTT. Thank you, Admiral Justice. We will now have questions from the members, and I will recognize myself for 5 minutes.

Mr. Brown, you had mentioned the standard for canines. Are you working with experts to ascertain whether or not a national standard for training canines would be appropriate?

Mr. BROWN. Yes, sir, we are. We have an ongoing program with the FBI and the National Institute of Justice called the Scientific Working Group Dog and Orthogonal Detector Guidelines. It is to establish the best practices to do this.

Mr. SCOTT. You also have a no-fly list. If you believe you are wrongly on the no-fly list, is there a way to get your name off the list?

Mr. BROWN. There is a redress process that TSA has, yes, sir.

Mr. SCOTT. Is that very complicated?

Mr. BROWN. Sir, I am not that familiar with it, to be honest with you. I can give you a little bit of information about it. I know that you have to apply to it and it takes a little—but I am not sure how complicated the process really is. I can find out for you, though, and get back to you.

Mr. SCOTT. Thank you.

Mr. Self, you issued the ID cards for port workers?

Chief SELF. No, sir—U.S.

Mr. SCOTT. Who does?

Chief SELF. I believe that would be the Office of Field Operations.

Mr. SCOTT. Office of Field Operations of what?

Chief SELF. Under CBP, sir.

Mr. SCOTT. Are you involved in port operations at all?

Chief SELF. U.S. Border Patrol, sir, typically are not. We will help the OFO officers in the field doing certain operations at times.

Mr. SCOTT. Mr. Parmer, if someone is detained at a port of entry and has dependent children, and they are the only person available, what happens to the children?

Mr. PARMER. We have protocols in place for humanitarian concerns. If it is a sole care provider then the totality of the circumstances is taken into consideration, and ordinarily if it is a sole care provider situation the individual is released with a notice to appear later in order to take care of the children.

Mr. SCOTT. If you have death of persons in the custody of ICE, are those deaths reported under the Deaths in Custody Act? Do you know?

Mr. PARMER. I do not know, sir. I am sorry.

Mr. SCOTT. If you could—

Mr. PARMER. We do keep track of the individuals who, within our custody, who are obviously—die—but I don't know if it is reported under that particular act.

Mr. SCOTT. You are coordinating your activities with local law enforcement?

Mr. PARMER. Yes, sir.

Mr. SCOTT. If local law enforcement begins enforcing immigration law, is there any potential for problems with community relations between the local police and the community that may have many immigrant citizens?

Mr. PARMER. Yes, sir. As we have learned, there are—with the merger of the agencies within DHS, there are—for those of us who were unacclimated to the immigration arena before March 1, 2003, it has been a learning process for all of us. And there are actually many social and political concerns that relate to the immigration concerns. But if the State or local authorities implement immigration statutes on their own, as we have learned in the Federal arena, there are all these implications for relations with the community.

Mr. SCOTT. What training is done to make sure that local police do not engage in illegal profiling?

Mr. PARMER. Well, in terms of what we do within ICE, we have—as part of title 8–287, section 287G, we provide training for the State and local authorities to look for immigration violations; but profiling is not a part of that—that is a no-no within our scope of order. We don't profile, so—

Mr. SCOTT. That is because your agents have been trained. Local law enforcement may not have the same training.

My time is expired, and I may come back for a second round.

Mr. PARMER. Sure.

Mr. SCOTT. Mr. Gohmert?

Mr. GOHMERT. Thank you. And I appreciate you all's statements.

First of all, let me ask Mr. Parmer: After your agency, ICE, is notified that an illegal alien is in local custody, does ICE have the authority to say, "Go ahead and detain them," and from that point forward the Federal Government will reimburse local law enforcement for holding them?

Mr. PARMER. We have the authority to advise the local authorities to detain them, but I am not sure what the reimbursement protocols are.

Mr. GOHMERT. Because of course if you advise local law enforcement to detain somebody—and this is a complaint I have heard from local law enforcement—they can be told to detain somebody and then hold them for 30 days, and then ICE will come back and say, “Well, we decided not to pursue it,” and so they are out all that money for an individual they have held which, around my jurisdiction is around \$50 a day. And that is an awful lot of money for the Federal Government to ask a local government to be out, and then not reimburse. If you are not familiar with the answer to that question, who do you think would be?

Mr. PARMER. Well, sir, we are divided up within ICE into the Office of Investigations, which is the component I am representing here today, although I am speaking on behalf of all of ICE, but we also have Detention and Removal Operations, the Federal Protective Service, the Office of International Affairs—

Mr. GOHMERT. But my question, who would—

Mr. PARMER. The more appropriate entity to answer that question would be Detention and Removal Operations.

Mr. GOHMERT. But you don’t know who is in charge of that?

Mr. PARMER. Mr. Gary Mead is the director.

Mr. GOHMERT. Okay. Thank you.

Mr. SCOTT. Since you are representing part of the agency, we may have good questions that you could have the appropriate person—that would be helpful.

Mr. PARMER. Yes, sir. He is not here today, but—

Mr. SCOTT. That is why we include the submitted questions.

Mr. PARMER. Yes, sir. Thank you.

Mr. GOHMERT. Mr. Stenger, when personal identification information is stolen from the Internet, how does and when does the Secret Service become involved in that?

Mr. STENGER. Mr. Congressman, we don’t have any specialists for investigations. If a case is brought to our attention we evaluate each one on the merits of the case—

Mr. GOHMERT. Somebody has to bring it to your attention? See, you brought that up in your opening statement and I wasn’t aware that you got involved in that, other than the FBI did, but did I understand right? That is something you get involved in if it is brought to your attention?

Mr. STENGER. That is correct, sir. There are a number of agencies that have cross-cutting jurisdiction, including the FBI, Postal Inspectors, as well as Secret Service, but if these types of cases—if it is access device or computer fraud—one of the violations that we investigate—if brought to our attention, we will take the case in—

Mr. GOHMERT. But someone has to bring it—my time is so limited. I hate to be rude and keep cutting you off, but to go to my question, at what point—what threshold—do you get involved? That is when somebody brings it to your attention, is that right?

Mr. STENGER. That is correct.

Mr. GOHMERT. Thank you.

Let me ask about the no-fly list, Mr. Brown. After TSA takes somebody off that list—like I have got a general,—general, served 29 years in the military, and he was on the terrorist watch list. It took a while to get his name removed by TSA, and yet the airlines still have trouble recognizing he is not on the list because he is not off their list yet.

And so it seems kind of absurd to treat a real hero like this, and I understood from Secretary Chertoff when he testified last week, you remove them but it doesn't seem like there is any follow-up to make sure the airlines remove them off. And so it seems almost like a Seinfeld episode: You remove them off, but nobody gets them out there in the field off the list, which means what good does it do?

And so, is there follow up that you do with the airlines to make sure they take them off the list?

Mr. BROWN. Yes, sir, there is. I am not familiar with the process, but there is some follow up. I do know that.

Mr. GOHMERT. There is some follow up, but you don't know what it is?

Mr. BROWN. No, sir, I don't. I am not familiar with that.

Mr. GOHMERT. Think you could find out what it is?

Mr. BROWN. Yes, sir. Certainly.

Mr. GOHMERT. So we can follow up on the follow up.

And then as far as Chief Self, we had a Border Patrol agent from my district in Henderson, Clint Thrasher, that was—his family was told he was following illegal aliens when his—I believe it was a Cessna—went down. Of course there was some concern, you know, was he being fired on? Was there anything like that? I just wondered, did NTSB or any other Federal agency find a reason for that crash and give a specific reason?

Chief SELF. Yes, sir. NTSB, FBI, OPR, and FAA all investigated that crash. The finding was pilot error, and he was, of course, killed in 2007 while in the line of duty.

Mr. GOHMERT. Okay. So they all attributed it to pilot error. Was there any evidence at all that his plane was ever fired upon?

Chief SELF. No evidence whatsoever, sir.

Mr. GOHMERT. Well, I might encourage you to pass that on to Secretary Chertoff. He wasn't aware we lost anybody like that.

So, thank you. I see my time has expired.

Mr. SCOTT. Thank you.

Mr. Delahunt was next, and I understand you want to defer to the gentleman from New York.

The gentleman from New York, Mr. Nadler?

Mr. NADLER. Thank you. And I appreciate the gentleman deferring; I have a meeting to go to shortly.

Mr. Parmer—that the ICE has invaded people's homes—ICE agents banging on people's doors—agents have entered people's bedrooms. Assistant Secretary Myers stated, ICE agents only enter with the—consent. Do you agree with that?

Mr. PARMER. Yes, sir.

Mr. NADLER. And when the police—your home brandishing—who may not be able to understand, how do you get consent?

Mr. PARMER. Well, we have bilingual agents and officers who are out on these, and that is—the early morning hours are often the best time to catch individuals at home, but we always have—

Mr. NADLER [continuing]. Many of these people that I have known, I—the people banging on my door demanding entrance, what did I do? Is that informed consent?

Mr. PARMER. I can't speak to anecdotal stories, but I know that we have a professional and—

Mr. NADLER [continuing]. Lawsuits are pending, they are not anecdotal stories.

Mr. PARMER. They are lawsuits pending, and they are still in litigation, so—

Mr. NADLER. What standards?

Mr. PARMER. If an individual is asked to allow agents to enter their residence, then they enter. We have had instances where—in the lawsuit in which you are referring to—a great many of the requested entries were—the agents wound up standing by the residence for hours on end waiting for someone either to come in or out of the residence so they could conduct their interviews; but they did not forcibly enter any residence. That is just against the law.

Mr. NADLER. Let me go further. ICE has stated—there have been a lot of reports—U.S. citizens are being arrested. What is ICE's policy regarding collateral corrections? What compensation do you give to people who are illegally arrested?

Mr. PARMER. No one is arrested until their alienage is determined. If someone is—

Mr. NADLER. Excuse me, I don't think that is true. U.S. citizens have been arrested.

Mr. PARMER. If we can determine alienage on the spot then they are immediately released. As soon as we can reasonably determine the citizenship of an individual in our custody while we are detaining—

Mr. NADLER [continuing]. Five o'clock in the morning. How can you determine alienage? Five o'clock in the morning, on the spot?

Mr. PARMER. Any combination of things: documentation, a combination—any reasonable responses to questions, documentation—

Mr. NADLER. So you think it is reasonable that anybody, as an American citizen, should produce his passport or other documentation, on demand, at 5 o'clock in the morning?

Mr. PARMER. I do.

Mr. NADLER. You do?

Mr. PARMER. I do think that is reasonable. I mean, if someone awakened me at 5 o'clock in the morning, I would be able to produce my driver's license or any other document to show that I was a legitimate citizen. I do.

Mr. NADLER. And what if you didn't drive?

Mr. PARMER. Then most States have identification cards.

Mr. NADLER. How do you know when people don't have these—identification cards—

Mr. PARMER. And our agents are not bound by just that particular documentation.

Mr. NADLER. Are there any guidelines that have been published to help to show what you would look for?

Mr. PARMER. Yes, sir. We have published guidelines to the field; we have a checklist that we go down. We take great precaution in ensuring that no U.S. citizens—

Mr. NADLER. Yet, ICE has admitted—U.S. citizens have been arrested.

Mr. PARMER. No, sir. I don't acknowledge that—

Mr. NADLER. You don't. Then why—as collateral?

Mr. PARMER. Collateral arrest could be individuals who were not targeted, but who happened to be illegal aliens who were present at the time of the individual who was targeted—

Mr. NADLER. My time has expired, but I would request that you supply the Committee, please, with all the written guidelines that are supplied in training, that are supplied to agents so that when you go to somebody's house at 5 o'clock in the morning, what their instructions are to obtain consent, and what the guidelines are to determine alienage under those circumstances.

Mr. PARMER. I would be happy to do that—

Mr. NADLER [continuing]. Figures for the—how many U.S. citizens have been arrested in the last year—

Mr. PARMER. I would be happy to provide that, sir.

Mr. NADLER. Thank you.

Mr. SCOTT. Thank you. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman.

It is good to have you all with us, gentlemen.

Admiral, last year, I am told, the Coast Guard confiscated more than 350,000 pounds of cocaine on the high seas, surpassing all previous records. How has the interagency efforts between the United States and our international colleagues contributed to the Coast Guard's interdiction success in transit zones?

Admiral JUSTICE. Sir, we have established, over the past few years, 27 separate bilateral agreements with foreign nations—various foreign nations: Colombia, Ecuador, Venezuela, Dominican Republic, et cetera—and we use those bilateral agreements to have the ability to do law enforcement with the flag-state vessels. And we exercise those authorities on a daily basis.

Our ability to work with those foreign nations—which we do, as I said, daily—has the ability for us to deliver consequences to those foreign nations, the peoples.

Mr. COBLE. Are my figures correct: 350,000 pounds?

Admiral JUSTICE. That is correct, sir.

Mr. COBLE. Mr. Stenger, the USA PATRIOT Act mandates Secret Service to establish a nationwide network of electronic crimes. Have these task forces been helpful in combating cyber attacks on the Nation's financial and banking infrastructure?

Mr. STENGER. Yes, sir, I believe they have. We have a national network of 24 of these electronic crimes task forces in conjunction with 29 financial crimes task forces, and I think the sharing of information and the relationships that have developed there—with academia, with the private sector—especially the private sector, because they are, in fact, in most of these incursions and hackings, are the victims.

So we are dependent upon them to inform us of this information, and the electronic crimes task forces really strengthen those relationships, as well as strengthen the relationships with our local and State partners to develop that sharing of information, that when they receive information on something like this, we can share that information and bring all of the appropriate resources to bear.

Mr. COBLE [continuing]. Thank you.

Mr. Self, describe, if you will, ICE's efforts to identify, arrest, and remove alien gang members.

Chief SELF. Border Patrol really has no interaction with ICE as it pertains to alien gang members, other than when we apprehend an alien gang member, at that point in time we will turn it over to ICE for prosecution. Sir, if you are speaking operationally, as to what they do in areas such as San Antonio or L.A., we don't take part in those operations with them.

Mr. COBLE. Anybody? Anybody want to respond to that question?

Mr. PARMER. Yes. We, through Operation Community Shield, we do target illegal alien gang members. Since inception, we have arrested well over 8,000 illegal gang members—illegal alien gang members—within the last fiscal year, over 3,300. I am not sure, other than—specifically what your question is, how we—

Mr. COBLE. Yes—

Mr. PARMER. Very often, it is referrals from the local constabularies—the State and local department—that they are having a gang problem in their area, and we respond and try to develop as much law enforcement intelligence as we can based upon the referral, and then go out and do a sweep of the area in question.

Mr. COBLE. Admiral, before my time expires, let me come back to—Alien Smuggling Act. The amendments were part of the 2008 Coast Guard authorization, generally, tell the Subcommittee, if you will, why amending the Maritime Alien Smuggling Act is essential to the Coast Guard anti-smuggling effort.

Admiral JUSTICE. Yes, sir. Right now, when illegal aliens on the high seas are smuggled, when we catch the boat we have got the crime in front of us. The current laws, the penalties are misdemeanor-level offenses, they don't have any teeth, and they are not an inhibitor to the smugglers. In this—that the 2237 will put some teeth into our ability to enforce these laws.

Mr. COBLE. Thank you.

My time has expired. I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

Admiral Justice, were you describing one that is on the books, or the one that you want on the books?

Admiral JUSTICE. The one that is on the books now is the one that is not—it is weak; it is not strong enough. I am describing the one that we have worked to get on the books, sir.

Mr. SCOTT. Thank you.

The gentleman from Massachusetts, Mr. Delahunt?

Mr. DELAHUNT. Thank you, Admiral, for the outstanding work that the Coast Guard is doing on behalf of the country. You indicated that we have an agreement with Venezuela. How is that working? What kind of a grade—as far as that particular agreement?



Admiral JUSTICE. Surprisingly enough, sir, when it comes to counter-drug operations and counter-drug interactions, there is a facet of the Venezuelan government that will interact with us and we will have communications with them. So that is ongoing, sir.

Mr. DELAHUNT. They get a good report card?

Admiral JUSTICE. Yes, sir.

Mr. DELAHUNT. Mr. Parmer, are you familiar with the case of Mahir Arar? How long have you been with the—department?

Mr. PARMER. March 1, 2003.

Mr. DELAHUNT. March 1, 2003. Are you familiar—

Mr. PARMER. Since it's inception.

Mr. DELAHUNT [continuing]. Of Mahir Arar, a dual national Canadian-Syrian?

Mr. PARMER. The name doesn't ring a bell, sir, but the circumstances—

Mr. DELAHUNT [continuing]. Facts—because I am interested if there is a policy within ICE or its predecessor, INS. On September 26, 2002 this individual, Mr. Arar, was flying from Zurich to Montreal, and he was transiting through JFK Airport in New York, and there he was detained for hours by FBI, presumably by ICE or its predecessor—

Mr. PARMER. Yes, sir.

Mr. DELAHUNT [continuing]. And the NYPD. And the next day he was sent to a detention facility in Brooklyn where he was further interrogated, and INS officials informed him that they would like him to—return to Syria.

This is an individual who was born in Syria; he is around, I think, around 35 years old. He had spent the last 20 years of his life in Canada—was a Canadian national. He said no, he didn't want to return to Syria. He was on the watch list; it was alleged that he was an Al Qaida associate.

Subsequently that was proven to be correct, but on September 28, he was given a document saying that he was inadmissible under section 235C of the Immigration and Nationality Act because he was a—of al Qaida. On October 2 he was permitted a 2-minute phone call; he called his mother-in-law up in Ottawa, and he expressed his concern to her that he would be sent to Syria.

On October 4 he had a visit from the Canadian Counsel who told him, "Don't worry about it; it won't happen." October 6 he was asked by American officials why he did not want to go to Syria, and he informed them that he was concerned about being tortured because he hadn't met his military obligation prior to his leaving at around, I think, 17 or 18 years old. In addition, he was a Sunni, he indicated.

On October 8 he read a document saying that they decided, based on classified information, that he was Al Qaida and that the INS director had decided to send him to Syria. Protestors say that he would be tortured, but that didn't seem to cause any consternation. And they are saying that if he was taken in change to a private jet, flown to Jordan and then on to Syria, we—is there a policy in terms—you are not familiar with that case, now that I am—

Mr. PARMER. Mr. Delahunt, no. I apologize—

Mr. DELAHUNT. Don't apologize.

Mr. PARMER [continuing]. But I am not familiar with it. But my colleague, Ms. Acom, just passed me a note saying that she is familiar with it, but as you alluded, there is a DHS-OIG report dealing with that particular issue that is classified.

Mr. DELAHUNT. Right. I mean, well, just about everything is classified. But I guess what I am looking for is an unclassified to what the policy is when they are a dual citizen of another country, and in this case specifically, why Syria rather than Canada?

Mr. PARMER. That is a very good question, sir, and I don't know—obviously he was not a U.S. citizen, so he should have—it would stand to reason that he should have gone back to Canada before any decision was made, but I—because of the nature of the issue, I can't—and my unfamiliarity with it—I can't respond to your question.

Mr. DELAHUNT. But somebody has got to respond at some point in time.

Mr. PARMER. Perhaps our OIG could meet with you in a different setting and—

Mr. DELAHUNT. But you know, the American people are very concerned about how we are viewed across the world; and it is incidents like this that erode respect for the United States, because if one had an opportunity to examine the Department of State reports, it was inevitable—at least if you can rely on those reports—that he was going to be tortured in Syria, and he was. That doesn't bespeak well of what occurred, and hopefully there has been a review of that decision, and the American people deserve to know why he was sent to Syria rather than to Canada.

Mr. PARMER. Yes. Yes, sir. I can't speak to that; it predates the Department of Homeland Security and Immigration and Customs Enforcement. But I can assure you, in my tenure with this organization, nothing like that has occurred.

Mr. DELAHUNT. Thank you.

Mr. PARMER. Thank you, sir.

Mr. SCOTT. Thank you.

The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Thank you very much, Mr. Chairman.

Last week—and I will address this to anyone who wants to handle it—last week the Washington Post published an article highlighting the very real possibility of a cyber attack on our Nation's infrastructure by cyber terrorists. This article, together with the reports that botnets have invaded more than 5 million computers across the Nation and are “the weapon of choice for criminals,” according to FBI director Robert Mueller, illustrate the seriousness of this issue.

What is the Department of Homeland Security doing to ensure that our cyberspace is secure, and does law enforcement have the tool it needs to effectively investigate and prosecute these types of crimes to keep our Nation safe?

Mr. STENGER. Speaking for the Secret Service, sir, we work very aggressively on cyber security issues and the various aspects of cyber security; and some concerns the overall system security. Our role in the Department of Homeland Security, as an investigative agency, is to investigate the criminal areas.

And I think one of the issues that we have found a lot of times is complementary: terrorism, law enforcement and crime are not things that don't go well together. Many times we find—and I think the old adage that not every criminal is a terrorist, but every terrorist is a criminal—and we find more and more, the methods of the criminals that are out there using cyberspace and electronic crimes actually enable the funding of some of their activities.

So the lessons we learn and the information that we are receiving, both from our law enforcement partners here, from the private sector, as well as many of our law enforcement and private sector partners overseas, is really giving us some information, I think, that is very important to move into the overall cyber security strategy.

Mr. CHABOT. Yes, sir.

Admiral JUSTICE. Sir, I will add—I know, even this morning listening to the Coast Guard CIO, you know, briefing our commandant about what he is doing today, DHS is focused and aggressively attending to this issue—DHS at large. There is a meeting today; I think there is a tabletop sort of exercise at that level where they are talking about these issues.

They are looking at having some sort of a national PFO, similar to how DHS is attending to the pandemic challenge. You know, cross-cutting, obviously is, as you know, an interagency, intergovernmental issue. But it is absolutely on the front plate of the DHS.

Mr. CHABOT. Anybody else care to comment? Let me just bring to your attention a bill that has been introduced called the Cyber Security Enhancement Act of 2007. It was introduced by Congressman Adam Schiff, who is a Democrat from California, and myself—I happen to be a Republican from Ohio—so it is a bipartisan bill; we have 20 co-sponsors so far. In short, the bill would amend the Federal Criminal Code to do a number of things.

I will list those just briefly here: Number one, prohibit accessing a protected computer to obtain unique identification number, address, a routing code, or access device; two, revise the definition of protected computer to include computers affecting interstate or foreign commerce or communications; three, expand the definition of racketeering to include computer fraud; four, redefine the crime of computer-related extortion to include threats to access without authorization or to exceed authorized access of a protected computer; five—and there are only seven—impose criminal penalties for conspiracy to commit computer fraud; six, require forfeiture of property used to commit computer fraud; and seven, impose criminal penalties for damaging ten or more protected computers during any 1-year period.

And it also directs the U.S. Sentencing Commission to review and amend its guidelines and policy statements to reflect congressional intent to increase criminal penalties for computer fraud. Without going into great detail, does that seem like something that might make it—might be a better tool for law enforcement?

Mr. STENGER. Yes, Congressman, I am familiar with that. We do support that because I think in today's environment with cyber crimes, the evolving nature of these types of crimes need to be addressed in evolving legislative initiatives in order to be able to address those appropriately.

And whether it is new laws or enhancing the existing laws, I think it is very opportune to be able to do that as these crime types have developed. So we are very supportive of the Committee looking at new ways to address the evolving criminal nature of what is taking place.

Mr. CHABOT. Thank you very much.

I see my time has expired, so I will yield back.

Mr. SCOTT. Thank you.

The gentlelady from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, thank you so very much, and—

Admiral JUSTICE. I would say it is a DHS issue, that TSA should technically be overseeing the TWIC issue. We are supporting it in the ports, and we feel at this time—it is a phased implementation, and we feel we are on track to move forward.

Ms. JACKSON LEE. Even though—

Admiral JUSTICE. Yes.

Ms. JACKSON LEE [continuing]. And the question is, do you have enough personnel to—

Admiral JUSTICE. Yes we do, ma'am. The 2009 budget request that we have, that is the right amount.

Ms. JACKSON LEE. Let me just ask—

Admiral JUSTICE. Okay. Yes, ma'am.

Ms. JACKSON LEE [continuing]. I don't ask questions. Let me go straight to the question?

Mr. BROWN. Well, we work off of a protocol that is dictated by threat—on our ability, and we have assessed all the flights that we—by a risk-based strategic deployment policy. That is how we identify the flights that we are wanting to address. I am not quite sure what you mean, ma'am.

Ms. JACKSON LEE. Well, let me stop you—

Mr. BROWN. Sure.

Ms. JACKSON LEE [continuing]. What I would like to know is—

Mr. BROWN. Yes, ma'am.

Ms. JACKSON LEE [continuing]. That we are having difficulty with the children at the border—, and I would like to know what we are doing—children being held—what are you doing to ensure that that is not happening.

Chief SELF. Yes, ma'am. Border Patrol is presently working with the Office of Refugee Resettlement. What happens is, when we apprehend an unaccompanied minor, we will take him in and we will go through the processing with the minor. At that point, we start engaging with ORR and trying to find them bed space.

There are times when we can't find bed space; we just revamped a hold room policy that ensures that that minor is taken care of. Within the hold policy, it outlines that that minor will have two to three hot meals a day, and any request for—

Ms. JACKSON LEE [continuing]. For 72 hours, that absolutely, without a doubt.

Chief SELF. I cannot tell you that. But I can tell you that we are doing everything we can to work with ORR, civil rights, civil liberties, to ensure that they are moved out of our detention space as quickly as we can.

Ms. JACKSON LEE. Let me pursue that with you.

Chief SELF. I understand, ma'am.

Ms. JACKSON LEE. And I thank you.

Mr. PARMER. Yes, ma'am. I think we will all agree that was a very unfortunate incident. I did not personally attend the function, which was intended to be a fundraiser, but I think it is our overall regret and embarrassment, and this organization is well on the record. And we have very proactive measures in terms of sensitivities to ethnicity and EEO matters that have been reinvigorated as a result of that incident. And I—

Ms. JACKSON LEE [continuing]. More detail.

Mr. PARMER. Yes, ma'am.

Ms. JACKSON LEE [continuing]. It affects, if you will—

Mr. PARMER. Yes, ma'am.

Ms. JACKSON LEE [continuing]. I appreciate—a more detailed response.

Mr. SCOTT. Thank you.

We are going to have a couple more questions, and I would recognize myself.

First, Mr. Parmer, the GAO has a report on ICE practices that identified some problem areas. Could you provide us with the list of problem areas that were identified and what you have done since October 2007 to address them?

Mr. PARMER. Yes, sir. I think the crux of the report had to do with officers' discretion in the field about detention—ability to release from detention and humanitarian concerns. And as an organization, we have taken on—

Mr. SCOTT. If you could provide us with the report in which you have got in writing, we would appreciate it.

Mr. PARMER. Yes, sir. I will—

Mr. SCOTT. Does ICE have a policy against torture?

Mr. PARMER. We do not torture, no, sir.

Mr. SCOTT. And to follow up on the gentleman from Massachusetts, do you coordinate with other nations to have people tortured?

Mr. PARMER. No, sir. We do not in any form or fashion condone torture.

Mr. SCOTT. Thank you.

Mr. Stenger, there have been reports that some of the government computers were hacked, possibly by people from China. What is the status—can you give us any update in open session as to what the status of that is?

Mr. STENGER. Mr. Chairman, because of, I think, the sensitivity of it, it is going to be very difficult to comment on it, but I do believe that there are steps being taken to secure the systems—not only government systems, but military systems and private sector systems—from malicious malware that is out there to prevent losses like that could take place.

Mr. SCOTT. In the ID theft, one of the problems with consumer ID theft is, what usually happens is when someone gets their identification compromised and someone runs up charges on their credit card, what usually happens is the bank writes it off. There, at that point, are no complaining witnesses and the thief pretty much gets away. What would it take to set up an operation where routine ID theft could be actually investigated and prosecuted?

Mr. STENGER. Mr. Chairman, because of the fact that it really cross-cuts many jurisdictions, I think the task force model that we have—we are a very strong proponent of both the electronic crime and the financial crime task forces—is really, ultimately, the answer to this situation; because we don't have thresholds for investigations—I know there was some discussion about thresholds for prosecution—but for us, as an investigative agency, we take everything individually on its merit. So if someone brings forth a case to us on identity theft, we will take a look at it and try and work it in the proper context.

Mr. SCOTT. So most of these can be solved, but they are labor-intensive?

Mr. STENGER. That is correct, Mr. Chairman.

Mr. SCOTT. My question is, how much would we need to appropriate? We appropriated a few million dollars when we passed the last bill—that was about 2 years ago. We had in there some funding for ID theft investigations. I assumed it was woefully insufficient. My question is, what would we need to do to have an operation that could routinely track these things down?

Mr. STENGER. I think because of the nature—the evolving nature of this type of crime in cyberspace, it would be difficult to quantify an exact amount of money, but I do think that we must maintain recognition of the evolving nature of these crimes as well as legislation I think that is the right path to take, especially for identity theft, because it is not only a problem here, it is a problem overseas. And that—

Mr. SCOTT. You made a request for funding?

Mr. STENGER. Have we made a request? I would have to go back specifically to track that, as far as—

Mr. SCOTT. We would be looking for that, because we would like to fund sufficient operation to deter people from committing identity theft.

Admiral Justice, you mentioned the legislation that you wanted. Could you describe the—exactly what conduct you want proscribed in the new legislation?

Admiral JUSTICE. Yes, sir. We specifically are looking to make it illegal to just operate one of these vessels in international waters. A stateless vessel in international waters, if you are operating it, that is a crime. There is no good—

Mr. SCOTT [continuing]. Crime in the United States?

Admiral JUSTICE. It would be a crime punishable in the United States, yes, sir. There is no reason to have that out there, other than illicit activity.

Mr. SCOTT [continuing]. Any criminal activity—without proving any criminal activity, just the mere operation in international waters—

Admiral JUSTICE. That is correct. Yes, sir. What happens is—

Mr. SCOTT. A crime prosecutable in the United States?

Admiral JUSTICE. That is correct. Yes, sir. What happens, sir, is you can see they are going along, and the minute they counter-detect us, they throw one switch, the thing floods, and it goes to the bottom. And we can't get the cocaine off of it, and they are home-free.

Mr. SCOTT. If there is legitimate use of these—

Admiral JUSTICE. If there is a legitimate use, there would be a state; there would be a country that owned it, an owner. And if they could produce some ownership, it is not a crime. I am talking about a stateless vessel, there is no proof of where they came from or whose nationality it is. That is the key piece here.

Mr. SCOTT. Thank you.

Mr. GOHMERT. Thank you, Chairman. If you want to do something on that, I would be glad to join in with you. It does sound like if it is a stateless vessel that it is, you know, basically—speaks for itself—that it is a violation, and that is why they are wanting to remain anonymous.

Let me ask Admiral Justice, under the 1995 change to the Cuban Adjustment Act, Cubans who attempt to enter the United States over water are given parole status for 1 year and allowed to seek U.S. citizenship if they make it to dry land. If they don't make it to dry land, they are interdicted by the Coast Guard, detained, and sent back to Cuba.

As a result of that policy, smugglers engage in dangerous practices—place migrants in a dangerous situation. I am just wondering, have you ever questioned the wisdom of this wet-feet, dry-feet policy, and have you ever considered whether that policy ought to be changed? I am just curious to your thoughts on it.

Admiral JUSTICE. It does create an extraordinary challenge to us, and an incentive for lawlessness and for people to take great risks as they try to get to our sand—to our beach. And that—law, and that constitutes a definite challenge in the Florida Straits; it requires us to have extraordinary amounts of resources dedicated to the challenge, and it—

Mr. GOHMERT. Well, without leaving our country completely unprotected, do you have a policy that would cause less challenge? Of course, less challenge would be where you don't ever protect us from anybody coming in, but—policy like that—

Admiral JUSTICE. What we are asking, sir—and you supported it and we ask you just aim at some more definitive support—the Interauthorization Act, the law we would like to see as I mentioned to Congressman Coble, has stiffer penalties for the people we do catch out there; and we catch people, again, daily running high-speed, overloaded boats. We get them to stop, and we don't have enough teeth in the law to really make it not worth their time to do that. We want to make it not worth their time to try to smuggle people at high speeds, you know, into our Nation.

Mr. GOHMERT. Chief Self, my office was told that I could have access to the remains of the plane that Clint Thrasher was flying. Do you know who has possession of those remains?

Admiral JUSTICE. I believe it is going to be Air and Marine under CBP, sir. The plane is presently located at the El Paso International Airport.

Mr. GOHMERT. Okay. Thank you.

Mr. Stenger, who has primary jurisdiction to investigate things like Congress' computer systems being hacked into? Is that you or FBI—who has primary jurisdiction?

Mr. STENGER. Depending on what kind of crime it is—we share jurisdiction in many of these things. If it is a criminal attempt, obviously we share jurisdiction with the FBI; so either one of us or

both of us could work together depending on what the case looked like when it was initially brought forward. Certainly if it was terrorism, the Bureau would have primary jurisdiction.

Mr. GOHMERT. If it is terrorism; but if it is not for sure that it is terrorism, then we don't have a delineation as to who takes priority in investigating that?

Mr. STENGER. Unless it is set by MOU, Congressman, it could be co-worked together.

Mr. GOHMERT. Is there an MOU, or is it just MOUSE?

Mr. STENGER. I am not sure there is an MOU specifically on that concerning the Capitol, but I do believe that we do have an excellent working relationship with the FBI on this—

Mr. GOHMERT. Well, I understand that, but it sometimes—I know how it works: If two entities have the same jurisdiction, sometimes there is a battle and things get falling in the cracks. And we do have a problem, and I have been advised that—our members' financial information, some of it has been put online and made available to anybody out there on the Internet; and that wasn't even a crime, it was our own people getting it out there.

I am also told that the home address of all of you, all of us, all of that information is obtainable on the Internet, and I am just wondering if we don't need more protective laws to allow people to have greater privacy, because there is so much out there on everybody. I was at a briefing back when I was a judge where we were shown how people in prison, who may have been mad at us for sending them there, could get on the Internet, not only find out where exactly we live, floor plans for many of our homes, get a map printed out of how to get there and where to go in the home to go after whoever you want to go—it is amazing what is out there.

Do you feel like there ought to be more extensive laws protecting private information online?

Mr. STENGER. Congressman, I think that the globalization of information is a major problem—it is a major issue—and it is instantaneous. It is not like it used to be in just being delivered by the mail; it is instantaneous sharing of information. Specifically for this location and the Capitol, I believe the Capitol police would probably have the primary jurisdiction, and depending on their resources and availability, they would work together with us or the FBI.

But specifically—as mentioned by the congressman concerning the new legislation, that is an issue. I think existing laws need to be looked at, resources need to be looked at on a regular basis—

Mr. GOHMERT. That is why we are asking you not just, "Do we need to look at it?" but, "What do you recommend?" That is what I am getting to. You all are supposed to be the experts.

Mr. STENGER. Well, I think the recommendation would be, as crime evolves we do need to look at enhancing the existing laws. First off, the—globalization—international aspect of it needs to be addressed because it is continuing—

Mr. GOHMERT. Well, I know it needs to be addressed, and we thought we were doing that by inviting you up here. So we are trying to do that; we just need recommendations on exactly what to do. So I would ask if you would submit information in writing to us after the hearing that would give specific recommendations as



to what we could do to better protect ourselves and everybody out there, including you—you know if all your private information online—have you ever checked?

Mr. STENGER. It probably is, and I am, too, concerned; I think it has got to be everyone's concern. But we will be happy to provide that to you.

Mr. GOHMERT. Okay, thank you.

Thank you, Chairman, for your indulgence.

Mr. SCOTT. Thank you.

This concludes the hearing. I would ask the witnesses to—if there are other questions from the panel, they will be submitted in writing—would ask the witnesses to respond to those as quickly as possible so that they can be made part of the record. Without objection, the record will remain open for 1 additional week for additional comments and anything else people want to introduce.

With that, the hearing is now adjourned. Thank you very much. [Whereupon, at 11:46 a.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE  
JUDICIARY

In 2002, we brought a number of agencies together because of their expertise and capabilities so that we could create our best domestic defense against terrorism. Although no system is perfect, I think that we've had some success and I think that we're making progress. And, I thank Chairman Bobby Scott for holding this hearing an exchange of information and feedback such as this hearing is crucial for ensuring that we remain on the cutting edge against terrorism because sadly in today's world, we cannot afford to let our defenses down.

In today's hearing, I would like to emphasize that in keeping those defenses up, we also have to be sure that we are working just as hard to safeguard our civil liberties. After all, we could ensure our safety easily enough by clamping down on rights and liberties but that's not what America is about. If we were to do that, we would be safe but in effect, it would be a victory for the terrorists because they would change our way of life. So, we must strike that balance in which we're physically safe and safe within our liberties as well.

Today, we will hear from the Transportation Security Administration main law enforcement function, the Federal Air Marshals, the Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Secret Service, and the Coast Guard. Each has important functions and enormous challenges but mainly I would like to discuss ICE CPB and their operations.

I have three main concerns that I would like to address and the first is humanitarian. Reports of poor conditions for detainees particularly along the Southwest border raises some disturbing allegations. ICE and CBP have adopted a "zero tolerance" policy has pushed detention facilities past their capacities. Food, medicine, even blankets are apparently hard to come by and people are sleeping on nothing but concrete slabs. This concerns me because if the allegations are true, we are depriving people of basic necessities and it must be corrected.

The second is the delegation of ICE authority through the section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). We need to be sure that state and local law enforcement officers who enforce ICE responsibilities receive the proper training. They must be trained in the laws pertaining to unauthorized aliens, what constitutes being an unauthorized alien and we also must ensure and that their detention facilities meet the standards to ensure proper care.

The third concern is whether Due Process rights are being properly protected for detainees. The zero tolerance approach along the Southwest border is not only causing poor conditions in the holding facilities but apparently, access to adequate counsel is also in doubt. There are so many detainees that one lawyer must handle up to six or eight clients per day and there is little or no room to meet with clients confidentially. This raises serious concerns about whether detainees are receiving adequate counsel and if not, Due Process is not properly awarded in these cases, which would be unconstitutional.

In addressing these issues, I would like to hear from these witnesses about how their agencies are addressing the concerns. I should think that if ICE and CBP continue to pursue zero tolerance we would see requests for more and better detention facilities that would include upgraded health care. We should also see continuous improvement to their training of state and local officers to whom they delegate authority and requirements for those officers to have continuing education in order to keep their authority. Finally, I would like to see recommendations for increases to the federal public defenders' offices so that detainees can be adequately represented in our courts.

I am looking forward to discussing these issues today because they are a great concern to me. Again, I thank Chairman Bobby Scott for holding this important hearing and I yield back.

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PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Mr. Chairman, thank you for your leadership in convening today's very important hearing on the oversight of the Department of Homeland Security. I would also like to thank the ranking member the Honorable Louie Gohmert. Welcome to our distinguished panelists.

The Department of Homeland Security (DHS) was established six years ago. The National Strategy for Homeland Security and the Homeland Security Act of 2002 served to mobilize and organize our nation to secure the homeland from terrorist attacks. As part of the creation of DHS, the following law enforcement agencies were either transformed to DHS or created via consolidation of two or more agencies: the Transportation Security Administration, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the United States Secret Service, and the U.S. Coast Guard.

The primary reason for the establishment of DHS was to provide the unifying core for the vast network of organizations and institutions involved in the efforts to secure our nation. In order to better do this and to provide guidance to the 180,000 DHS men and women who work every day on this important task, the Department developed its own high-level strategic plan. The vision, mission statements, strategic goals and objectives provide the framework guiding the actions that make up the daily operations of the Department.

DHS's vision is simple: to preserve our freedoms, protect America, and secure our homeland. Its mission is to lead the unified national effort to secure America; prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation; and ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce.

DHS has seven strategic goals and objectives. These include, awareness, prevention, protection, response, recovery, service, and organizational excellence.

DHS has engaged in much good work over the past six years, but more needs to be done. The five agencies that comprise DHS, their functions, their accomplishments, and their challenges are the subject of this hearing.

#### I. TRANSPORTATION SECURITY ADMINISTRATION (TSA)

The TSA's main law enforcement functions are carried out through the Federal Air Marshals and the National Explosives Detection Canine Team Programs. The Federal Air Marshals are the primary law enforcement entity within the TSA. They are deployed on flights around the world and in the United States to ensure security of the plane and the passengers during flight. The Federal Air Marshals staff several positions at different organizations such as the National Counterterrorism Center, the National Targeting Center, and on the Federal Bureau of Investigation (FBI) Joint Terrorism Task Forces. The Federal Marshals also work among other law enforcement and homeland security liaison assignments during times of heightened alert or special national events.

In its 2005 oversight hearing, the Subcommittee questioned administrators about several issues including undercover appearance, aircraft boarding procedures, lodging policies and standards of conduct. On March 5, 2008, during a full Committee hearing, DHS Secretary Michael Chertoff stated that the biggest air threat posed to the U.S. is by private jets entering U.S. airspace. During this hearing, we plan to follow-up on these issues and inquire about other aspects of air travel security.

#### II. UNITED STATES CUSTOMS AND BORDER PROTECTION (CBP)

CBP is responsible for protecting our nation's borders from terrorism, human and drug smuggling, illegal immigration, and agricultural pests while simultaneously facilitating the flow of legitimate travel and trade. CBP is responsible for guarding 7 thousand miles of land border of the United States with Canada and Mexico and 2 thousand miles of coastal waters surrounding the Florida peninsula and off the coast of Southern California. The agency also protects 95,000 miles of maritime border in partnership with the United States Coast Guard. CBP is also responsible for enforcing trade and tariff laws to ensure that industry operates in a fair and com-

petitive trade environment. This hearing will examine CBP standards for questioning individuals at the borders, human trafficking and what CBP does to combat this problem, and various problems associated with detention and removal.

### III. IMMIGRATION AND CUSTOMS ENFORCEMENT

Immigration and Customs Enforcement is the largest investigative branch of DHS. This agency was created after the tragic events of 9/11, by combining the law enforcement arms of the former Immigration and Naturalization Service and the former U.S. Customs Service, to more effectively enforce immigration and customs laws and to protect the United States from terrorist attacks.

Since its creation, ICE's workload has continuously increased. ICE has increased its worksite enforcement arrests from 510 in fiscal year 2002, to 4,383 in fiscal year 2006. ICE's Office of Detention and Removal Operations more than doubled its fugitive arrests from 7,958 in fiscal year 2005 to 15,467 in fiscal year 2006. In fiscal year 2006 alone, ICE removed about 182,000 aliens from the United States through its combined enforcement efforts. Nevertheless, at the end of fiscal year 2006, there were still an estimated 12 million unauthorized aliens in the United States.

In a report to Representative Lofgren and myself, the Government Accountability Office recommended several changes for ICE to improve its operations. GAO recognized that given the sheer number of unauthorized aliens, ICE would need to prioritize workloads and exercise officer discretion. For example, an alien who poses a threat via terrorism or other crime must be detained. On the other hand, humanitarian situations such as when an alien who poses no immediate threat and is a primary care giver, may call for the ICE officer issue a notice to appear rather than detention. Questions have been raised as to whether ICE's policies and training have been sufficient to impart the necessary expertise to the ICE officer to equip them to make the proper determination as to whether an alien should be detained or issued a notice. In addition to needing increased officer discretion, detention space may also factor into whether to detain an alien. The Subcommittee will request information about alternatives to detention and the acquisition of additional detention space.

### IV. UNITED STATES SECRET SERVICE

The United States Secret Service protects the president and the vice-president, their families, heads of state, and other designated individuals; investigates threats against these protectees; protects the White House, vice-president's residence, foreign missions, and other buildings within Washington, D.C.; and plans and implements security for designated National Special Security Events.

The Secret Service also investigates violations of laws relating to counterfeiting of United States currency and other financial crimes including: access device fraud, financial institution fraud, identity theft, computer fraud and other computer-based attacks on our nation's banking and telecommunications infrastructure.

The Subcommittee plans to inquire about when the Secret Service gets involved in state or local identity theft and the resources the Service needs to adequately combat identity theft and other cybercrimes in the United States and abroad.

### V. UNITED STATES COAST GUARD

The United States Coast Guard's law enforcement mission is maritime security. The goal of maritime security is to protect America's maritime borders from all intrusions by: (a) halting the flow of illegal drugs, aliens, and contraband into the United States through maritime routes; (b) preventing illegal fishing; and (c) suppressing violations of federal law in the maritime arena. This Subcommittee is concerned about the Coast Guard updating its technology and increasing personnel to meet its increasingly challenging mission. The Subcommittee will explore whether the Coast Guard has sufficient resources to carry out its goals.

I am eager to hear testimony from, and question, all of the agencies represented today. I welcome each of our distinguished panelists to provide insight into the various agencies that comprise DHS. The Department has achieved much over the past six years in ensuring that America is a safer place; however, much work needs to be done. I am hopeful that DHS will become more effective and diverse and that this hearing will help start us along the way. Again, I welcome the testimony from our distinguished panelists.

Thank you. Mr. Chairman, I yield the remainder of my time.

**HOUSE JUDICIARY HEARING Get-Backs  
MARCH 11, 2008**

Rep. Scott:

You also have a no-fly list. If you believe you're wrongly on the no-fly list, is there a way to get your name off the list?

Answer: The Department of Homeland Security launched the Traveler Redress Inquiry Program (DHS TRIP) in February 2007 to provide a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—such as airports and train stations—or crossing U.S. borders. Travel difficulties may include denied or delayed airline boarding, denied or delayed entry into and exit from the U.S. at a port of entry or border checkpoint, or repeated secondary screening at the airport security checkpoint.

Travelers may outline their concerns in a single request to DHS TRIP. The information received will be shared with applicable DHS component agencies, such as the Transportation Security Administration (TSA) and U.S. Customs and Border Protection, as well as with the U.S. Department of State and, when appropriate, with airport and airline operators. Information will be shared in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), and as established in the Privacy Impact Assessment published for DHS TRIP.

To participate in the program, travelers are asked to submit a completed Traveler Inquiry Form and requested copies of identity documents to DHS TRIP. Travelers may download an electronic form from the website at [www.dhs.gov/trip](http://www.dhs.gov/trip). Travelers are asked to not send original identity documents as they will not be returned. DHS will review the information submitted and work with other Federal agencies, if necessary, to resolve individual concerns and will inform the traveler in writing when review of his or her inquiry is complete.

Rep. Gohmert:

And so, is there follow-up that you do with the airlines to make sure they take them off the list?

Answer: As part of its airport security procedures, the U.S. Department of Homeland Security (DHS) requires airlines to verify the identity of all passengers to ensure that persons on Federal watch lists who are known to pose, or are suspected of posing, a threat to civil aviation or national security receive secondary screening or are denied boarding on commercial aircraft. The Federal watch lists are maintained by the U.S. Terrorist Screening Center in a consolidated Terrorist Screening Database, and are compiled from information provided by Federal intelligence and law enforcement agencies. The Federal watch lists include a No-Fly List and a Selectee List. Individuals on the No-Fly List are

prohibited from traveling on commercial aircraft. Individuals on the Selectee List are permitted to fly but receive secondary screening at airport security checkpoints. After a traveler experiences delays due to the watch list screening process and applies for redress through DHS TRIP (described above), TSA determines whether the individual is a positive match to the watch lists or is misidentified because of a same or similar name to an individual on the watch lists. Positive matches are referred to the Terrorist Screening Center for vetting and removal from the watch lists if appropriate. TSA assists the airlines in distinguishing passengers from persons who are on the watch lists by providing them daily with a list of individuals who have been cleared through DHS TRIP. The Cleared List includes information received from misidentified travelers who applied to DHS TRIP. With the information from the Cleared List, the airlines can more quickly determine that misidentified passengers are not the persons of interest whose names are on the watch lists.


DHS cannot ensure that an individual's travel will always be delay-free. Airline check-in procedures must still be followed and other security measures remain in place at the airport. For example, an individual may be selected for secondary screening to resolve a walk-through metal detector alarm or because of random selection. Because airline procedures for screening passengers against Federal watch lists vary, an individual may still be required to check in for flights at the airline ticket counter and be unable to print a boarding pass from a home computer or airport kiosk or at curbside.

While Federal regulations require airlines to verify the identity of passengers, we have found that there have been some inconsistencies in the implementation of the requirement and the methods used to compare passenger names. TSA continues to work with the airlines and the traveling public to eliminate those inconsistencies and to improve procedures. With support from Congress, TSA currently is developing Secure Flight, a passenger prescreening program that would transfer responsibility for the watch list comparison function from the airlines to the Federal Government and bring automation and consistency to the process. Specifically, Secure Flight will:

- Identify known and suspected terrorists;
- Prevent individuals on the No Fly List from boarding an aircraft;
- Identify individuals on the Selectee List for enhanced screening,
- Facilitate passenger air travel by providing fair, equitable and consistent matching process across all aircraft operators; and
- Protect individuals' privacy

Additional information regarding the Secure Flight program may be found by visiting the following link: [http://www.tsa.gov/what\\_we\\_do/layers/secureflight/index.shtm](http://www.tsa.gov/what_we_do/layers/secureflight/index.shtm).

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<p>WASHINGTON LEGISLATIVE OFFICE</p>		<p><b>The American Civil Liberties Union</b></p>
<p>AMERICAN CIVIL LIBERTIES UNION WASHINGTON LEGISLATIVE OFFICE 915 15th STREET, NW, 6<sup>TH</sup> FL. WASHINGTON, DC 20005 T/202.544.1681 F/202.544.0738 <a href="http://WWW.ACLU.ORG">WWW.ACLU.ORG</a></p>		<p>Written Statement For a Hearing on  "Law Enforcement Operations of the Department of Homeland Security"</p>
<p>Caroline Fredrickson DIRECTOR  NATIONAL OFFICE 125 BROAD STREET, 18<sup>TH</sup> FL. NEW YORK, NY 10004-2400 T/212.549.2500</p>	<p><b>Submitted to the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee</b></p>	<p><b>Tuesday, March 11, 2008</b></p>
<p>OFFICERS AND DIRECTORS HADIME STROSSEN PRESIDENT</p>	<p><b>Caroline Fredrickson, Director</b> ACLU Washington Legislative Office</p>	
<p>ANTHONY D. BOMEPO EXECUTIVE DIRECTOR</p>	<p><b>Joanne Lin, Legislative Counsel</b> ACLU Washington Legislative Office</p>	
<p>Page 1 of 8</p>		



### Introduction

The American Civil Liberties Union ("ACLU") commends the Subcommittee on Crime, Terrorism and Homeland Security of the House Judiciary Committee for conducting a hearing on Law Enforcement Operations of the Department of Homeland Security ("DHS"). We urge the Committee to initiate a rigorous oversight process to ensure that DHS is held accountable to Congress and the public for its enforcement practices. The following written statement, submitted on behalf of the ACLU, will address a range of problematic Immigration Customs Enforcement ("ICE"), a sub-department of DHS, practices at the interrogation, detention, and removal stages.<sup>1</sup>

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of hundreds of thousands of members, several national projects, and 53 affiliates nationwide. The ACLU was born during the "Red Scare" in 1920, a time when then U.S. Attorney General A. Mitchell Palmer ordered immigrants summarily detained and deported because of their political views. Since its founding, the ACLU has consistently defended and protected immigrants' rights. The ACLU has the largest litigation program in the country dedicated to defending the civil and constitutional rights of immigrants. Through a comprehensive advocacy program including litigation, public education, and legislative and administrative advocacy, the ACLU is at the forefront of major struggles securing immigrants' rights including legal challenges to ICE's unconstitutional laws and practices.

People charged with being removable are entitled to due process including a hearing before an immigration judge and review by a federal court. Among the specific rights that apply in removal proceedings are the right to be represented by counsel (at no expense to the government); to receive reasonable notice of the charges and of the time and place of the hearing; to have a reasonable opportunity to examine adverse evidence and witnesses; to present favorable evidence; to receive competent language interpretation; and to have the government prove its case by clear, convincing, and unequivocal evidence.

ICE has systematically chipped away at these core constitutional protections by pursuing an unprecedented campaign of interrogations, detention, and removal of immigrants. Since 2006, with the initiation of Operation Return to Sender, ICE has aggressively ramped up punitive deportation-only initiatives including:

- large-scale, mass raids in worksites and homes;
- dramatic increase in detention beds;
- expansion of federal immigration enforcement to include state and local police;
- denial of access to counsel for people facing removal from the U.S.;
- mass transfers of detainees to facilities hundreds of miles from their homes;
- incarceration of detainees in unsanitary inhumane conditions;

<sup>1</sup> This written statement is submitted in conjunction with the written and oral testimony of Mark Rosenbaum of the ACLU of Southern California. The testimony of Mr. Rosenbaum and James Brosnahan of Morrison & Foerster focused solely on the experiences of their client Pedro Guzman, a U.S. citizen born in California who was illegally deported to Mexico in 2007.

- denial of medical and dental care to detainees, including those with serious, life-threatening conditions.

#### **I. Unprecedented large-scale round-up raids**

Since the launch of Operation Return to Sender in 2006, ICE has engaged in an unprecedented round of raids, both at worksites and in homes, hitting many regions of the country. Below is a snapshot of just a few of the regions that have been hard hit by large-scale immigration raids:

Swift raids: On December 12, 2006, six Swift & Company facilities located in Greeley, Colorado; Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Marshalltown, Iowa and Worthington, Minnesota were raided by ICE. ICE estimates that approximately 1,282 Swift employees were detained on immigration violations, and 65 were charged with criminal violations related to identity theft.

New Bedford, Massachusetts raid: On March 6, 2007, the New Bedford community was devastated by one of the nation's largest immigration raids, resulting in the arrest of 361 workers of the Michael Bianco factory. All but a few were detained, and 206 were transferred to detention facilities in Texas, hundreds of miles from their families, homes, and counsel. An estimated 100 to 200 children were separated from their parents. In response, the ACLU and a coalition of groups filed a lawsuit, challenging ICE's misconduct during the raid.

Van Nuys, California raid: On February 7, 2008, more than 100 ICE agents raided a printer supply manufacturer in the San Fernando Valley, taking into custody over 130 employees on immigration-related charges and arresting eight on federal criminal charges. Following the raid, ICE officials denied the workers access to counsel during ICE's interrogation of the workers, even after the attorneys had filed Form G-28s Notice of Entry of Appearance. The ACLU, the National Immigration Law Center, and the National Lawyers Guild recently filed a lawsuit on behalf of the workers, challenging ICE's denial of access to counsel.

Long Island suburbs raids: In September 2007 teams of 6 to 10 armed ICE agents raided the homes of Latinos without court-issued search warrants. The raids were conducted during late night or pre-dawn hours. ICE agents pounded on and/or broke down doors and windows while screaming loudly at the inhabitants inside the house. ICE agents represented themselves as "police" and bullied or forced their way into people's homes without obtaining their consent to enter. The ACLU filed a lawsuit challenging that ICE violated the immigrants' Fourth amendment rights by entering and searching their homes without valid warrants or voluntary consent and in the absence of probable cause and exigent circumstances.

Georgia raids: In September 2006 armed federal agents searched and entered private homes without warrants and detained and interrogated people solely on the basis that they looked "Mexican." These raids swept so broadly that they covered homes where all the residents are U.S. citizens. In addition, the agents used excessive and wholly unnecessary force and destroyed private property without cause. The ACLU filed a class action suit on behalf of U.S. citizens who "appear Mexican," challenging that the federal agents violated the citizens' Fourth amendment rights by entering and searching homes without valid warrants or voluntary consent.

and in the absence of probable cause or exigent circumstances. The ACLU suit further challenges that the federal agents violated the citizens' Fifth amendment rights by targeting them on the basis of race/ethnicity and/or national origin in violation of the Equal Protection Clause.

DHS Secretary Chertoff has claimed that the ICE enforcement operations launched in 2006 are aimed at capturing "fugitive aliens," with the highest priority on apprehending individuals who pose a threat to national security or the community and whose criminal records include violent crimes. However, 94 percent of those arrested by the San Francisco Fugitive Operations Team between January 1 and March 31, 2007, did not fit within the category of "criminal fugitives." A majority were not even subject to outstanding removal orders according to a letter from the acting ICE director to Congresswoman Anna Eshoo. These numbers indicate that ICE's raids, though purportedly targeted at "fugitive aliens," in reality have swept so broadly that the vast majority of people arrested under Operation Return to Sender were innocent bystanders.

Among the thousands of people who have been rounded up by ICE under the auspices of Operation Return to Sender is Kebin Reyes, six years old at the time of his arrest in March 2007. A native-born U.S. citizen, Kebin was sleeping when ICE officers stormed into his home. Kebin's father Noe told the ICE agents that Kebin is a U.S. citizen, and asked permission to call a relative to care for Kebin while Noe was detained. The ICE agents refused. Instead they made Noe wake up Kebin, who watched as officers handcuffed his father, and then took father and son to the ICE booking station in San Francisco. Kebin spent 10 hours locked in a room with his father. ICE agents never allowed Noe to call someone to pick up Kebin. It was only when a relative heard from neighbors what happened and came to the ICE facility that Kebin was able to leave.

Like Kebin, children all over the country have been traumatized by seeing their parents swept up and taken away or by being left behind without care after school when parents have been arrested without notice. After the raids in which Kebin was arrested, the San Rafael City Schools Board of Education wrote to Congresswoman Lynn Woolsey, reporting, "The ICE raids sent our schools into a state of emergency. Many students were and remain distracted from school work as they worry about their loved ones. Most of these children are, by and large, American-born, full-fledged citizens with a right to a quality education and to live in this country for the rest of their lives." To vindicate Kebin's rights under the Fourth Amendment and to prevent future abuses, the ACLU, the Lawyers' Committee for Civil Rights, and the law firm of Coblentz Patch Duffy & Bass filed a lawsuit against ICE in April 2007.

Just as troubling as the sweeping breadth of recent raids are accompanying reports of rampant constitutional violations. Both DHS Secretary Chertoff and ICE Assistant Secretary Myers have publicly stated that administrative warrants cannot be used by ICE agents to enter people's homes. However, in practice, ICE agents have been entering people's homes, even without consent. ICE's response that people are voluntarily consenting to questioning is insupportable when considering that ICE agents, fully armed and identifying themselves as "police," are banging on people's doors and windows in the pre-dawn hours as the inhabitants are sleeping.

Sweeping and overbroad raids are terrorizing immigrant communities across the U.S. while doing little, if anything, to improve the safety and security of the U.S.

Recommendations: The ACLU urges that ICE:

- Halt large-scale, pre-dawn raids, both at worksites and in homes;
- Refrain from investigating and/or detaining family members, roommates, housemates, neighbors, and other bystanders, without individualized suspicion.
- Clarify standards for determining "consent"
- Not identify themselves as "police."
- Not question any persons represented by counsel without counsel present during the interview.

## **II. Expansion of federal immigration enforcement to include state and local police**

In recent years ICE has entered into an increasing number of 287(g) agreements with states and localities. Under 287(g) agreements, state and local law enforcement can identify, process, and detain immigrants whom they encounter during their daily law-enforcement activity, including traffic stops. The ACLU has challenged such 287(g) agreements on the basis that state and local law enforcement lack the inherent authority to arrest individuals for civil immigration violations. Enforcement of federal immigration laws is an exclusive federal function based on Congress's plenary powers to regulate immigration.

For example, the ACLU has sued Danbury, Connecticut for arresting 11 immigrants in September 2006 in a public park in an undercover immigration sting operation at a public park. A Danbury police officer disguised himself as a contractor/employer looking to hire day laborers. The ACLU lawsuit challenges the arrests on civil immigration violations on the basis of failure to have valid warrants, lack of probable cause, or lack of reason to believe that the detained were engaging in unlawful activity. Additionally, the suit challenges Danbury's immigration enforcement activities on the grounds that federal law preempts state or local police from civil immigration enforcement activity, thereby leaving Danbury without appropriate authority cognizable under 8 U.S.C. § 1357. The case also challenges the detentions on the basis on race, ethnicity, perceived national origin, asserting that the 11 immigrants were subjected to selective law enforcement arising out of a malicious and bad faith intent to drive them out of Danbury.

Supporters of 287(g) agreements often have little or no understanding of immigration law and its complexities. Some proponents envision a fictional database system where a local police officer can enter a person's name in the computer and immediately get an answer from ICE that the person is "legal" or "illegal." In reality, determining an individual's immigration status requires extensive training and expertise in immigration law and procedures, and thus is simply not suitable for state and local law enforcement.

Section 287(g) supporters fail to understand that immigration status is complex, fluid, and very case-specific. For example, many people are in the U.S. pursuant to a non-immigrant visa for employment, study, investment, travel, and other reasons. Most of them are typically admitted to

the U.S. for a certain period of time, but many can then request to extend their stay or to change to a different status with the DHS Citizenship Immigration Services ("CIS"). During the pendency of their application, they may have no documentation that proves they are in current lawful status even though CIS is aware of their presence in the U.S. and permits them to remain here until a decision is made on their application. Many people in the U.S. are in the midst of applying for permanent resident status, sponsored by a family member or employer. Others are seeking refugee protection. Others have been granted special status based on being a victim of family abuse, trafficking in persons, or a violent crime. Still others are in immigration removal proceedings but are applying for relief with an immigration judge. Still others have been denied relief by an immigration judge but are appealing their removal orders to the Board of Immigration Appeals. Finally, it is not uncommon for a single individual to be pursuing simultaneously multiple forms of immigration relief. These are just a few of the many permutations that could apply to a single individual who is arrested by a local police officer.

The practice of deputizing state and local police to enforce federal immigration laws has proven to be highly ineffective and dangerous. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up in Mexico – a country where he had never lived – forced to eat out of trash cans and bathe in rivers. His mother, also a U.S. citizen, took leave from her job to travel to Mexico in search of her son. She combed the jails and morgues of northern Mexico in search of her son. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. To vindicate Mr. Guzman's rights and to prevent future DHS errors and abuses, the ACLU and the law firm of Morrison & Foerster filed a lawsuit against ICE last year.

In addition, deputizing state and local law enforcement to become deportation agents pushes immigrant communities farther and farther away from police protection. Fearful that a call to the police will result in deportation, immigrant victims of crime, including battered women, are choosing not to summon the police, thereby subjecting themselves and their children to further violence. Ultimately this dynamic jeopardizes all segments of society, not just immigrant communities. Police rely heavily on tips from witnesses or people familiar with suspects. If the police are cut off from these sources of information, they will encounter greater difficulties in apprehending suspects and solving criminal cases.

Finally, charging state and local law enforcement with the responsibility of enforcing immigration laws opens the door for law enforcement to engage in racial profiling. Latinos, Asians, and other immigrants will be at risk of being stopped, arrested, interrogated, and detained by state and local law enforcement for no reason other than looking or sounding "foreign."

Recommendations: The ACLU urges that ICE:

- Halt entering into future 287(g) agreements with states and localities;
- Cease recognition and compliance with 287(g) agreements currently in operation.

### III. Growth and expansion of inhumane immigration detention

Immigration detention has more than quadrupled over the past 15 years. Each year Congress allocates more money to ICE for detention bed space and more personnel. The vast majority of detainees have no counsel to represent them in bond matters or immigration removal proceedings. Free or low-cost immigration legal services are completely absent in many regions. Frustrated by the unending incarceration and the lack of assistance in navigating the immigration system, many detainees – even those with legitimate immigration applications – simply give up and are deported. Their stories are the product of a failed immigration system – a system that purports to be premised on due process, but in actuality pushes people out of the U.S. by subjecting them to long periods of incarceration in unsanitary inhumane conditions, without access to appointed counsel.

These due process violations have been exacerbated by ICE's growing practice of transferring detainees to facilities far from their location of arrest, often hundreds of miles away from their homes and workplaces. For example, in October 2007 ICE closed down the San Pedro detention facility in Southern California and subsequently transferred over 420 detainees to facilities in Texas, Arizona, Washington State, and other parts of California. Prior to transferring the detainees to remote facilities, ICE did not notify the detainees' counsel. In many cases an immigration judge had already commenced merits hearings on the detainees' cases. The mass transfer of detainees out of state has resulted in unnecessary prolonged detention, with many detainees forced to start their cases all over again before a new immigration judge in a different jurisdiction.

In addition to challenging the constitutionality of mandatory detention and prolonged detention, the ACLU has been at the forefront of challenging ICE's inhumane unsanitary conditions of confinement including ICE's policy of family detention which resulted in the prolonged detention of families with children. In 2007 the ACLU and the University of Texas Law School sued on behalf of children incarcerated at the Hutto, Texas prison as their parents were pursuing bona fide asylum claims. At the time the lawsuits were filed, the children were receiving only one hour of education per day, were required to wear prison uniforms, were held in jail cells for much of the day, and were often disciplined by guards with threats of separation from their parents. In August 2007 the parties reached a settlement which mandated major improvements in conditions at Hutto. Although those families represented by the ACLU and University of Texas were eventually released from Hutto, other families with children are being detained in Hutto and other facilities.

In 2007 the ACLU filed a class action lawsuit against a Corrections Corporation of America facility in San Diego where detainees were incarcerated in grossly overcrowded quarters. A separate ACLU lawsuit against the San Diego facility challenged the inadequate medical and mental health care afforded to detainees. One of the detainees whose serious medical needs were grossly neglected was Francisco Castaneda, who testified before this Subcommittee on October 4, 2007, at a hearing on "Detention and Removal: Immigration Detainee Medical Care." Detained for eight months in the San Diego facility, Mr. Castaneda suffered extremely painful bleeding and discharge from his penis. Numerous health care professionals—both on-site and off-site—stated that Mr. Castaneda required a biopsy to determine whether he was suffering

from penile cancer. But the biopsy was never authorized. Instead of diagnosing and treating his serious condition, medical professionals provided Mr. Castaneda with pain medication and an order for clean boxer shorts on a daily basis, to replace the boxer shorts that he regularly soiled with blood and discharge. Only after relentless advocacy by the ACLU was Mr. Castaneda released from ICE custody. Mr. Castaneda promptly received a biopsy at the emergency room and learned that he had developed metastatic penile cancer that had already spread to other parts of his body. In February 2008, just four months after testifying before this Subcommittee, Mr. Castaneda passed away, succumbing to the cancer.

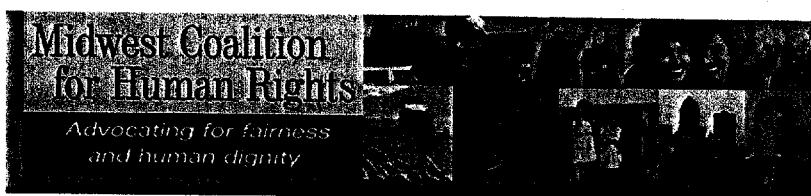
Recommendations for Congress:

- Congress should strengthen the long-established statutory right to counsel for all people facing removal from the U.S. by assuring access to appointed counsel.
- Congress should mandate that no detainee be housed in a facility that fails to comply with the detention standards. ICE shall codify, through the promulgation of regulations, national detention standards that are consistent with internationally recognized human rights principles.
- Congress should require that all immigration deaths in detention—including deaths at SPCs, CDFs, and IGSAs—be publicly reported by ICE to Congress on a regular basis.

Recommendations for ICE oversight:

- ICE shall develop non-penal alternatives to detention to decrease the number of people detained and/or subject to ICE supervision, especially with respect to asylum seekers, torture survivors, victims of human trafficking, juveniles, families with children, sole caregivers, survivors of domestic abuse and other violent crimes, and long-term permanent residents.
- ICE shall ensure that all detainees be given a constitutionally adequate custody review before an immigration judge or impartial adjudicator. In cases where ICE seeks to detain an individual beyond six months, ICE shall bear the burden of proving by clear and convincing evidence that prolonged detention is justified. Where ICE cannot make its burden, ICE shall release such detainees on bond with reasonable conditions.
- ICE shall not transfer detainees to remote facilities where a Form G-28 Notice of Entry of Appearance has been filed on behalf of a detainee, where the detainee has requested a bond hearing, where the detainee has filed an application with the immigration court, and/or when an immigration judge has conducted a merits hearing in the detainee's case.
- ICE shall ensure the transfer of complete medical records along with detainees so that receiving facilities have all of the information needed to ensure prompt, necessary treatment.

The ACLU appreciates the opportunity to submit this written statement and urges the Committee to exercise meaningful oversight over DHS and ICE by implementing the proposed recommendations.



<a href="#">Home</a>	<a href="#">Home</a>	<b>Upcoming Events</b>
<a href="#">About MCHR</a>	<b>State and Local Enforcement - 287 (g) Program</b>	"The Ghosts of Abu Ghraib" Film Screening 03/18/2008 - 8:30pm - 03/18/2008 - 9:00pm  Springfield, IL
<a href="#">Members</a>	Detention of Immigrants    MCHR Education Materials	
<a href="#">Our Projects</a>	State and local law enforcement agencies have shown increased interest over the past year in a program to train officers to enforce federal immigration law, and Congress will soon decide whether to fund further growth of the program.	
<a href="#">News</a>		3rd Annual Conference on Unaccompanied Immigrant Children 04/03/2008 - 9:00am - 04/05/2008 - 5:00pm
<a href="#">Get Involved</a>	Greater interest in the program worries some of its critics, who say involving local police in immigration enforcement leads to less cooperation from immigrants and heightens the risk of racial profiling.	John Marshall Law School - Chicago, IL
<a href="#">Funding</a>		
<a href="#">Resources</a>	A total of 597 officers in 34 state and local law enforcement agencies participate in what is known as the 287(g) program, named for the section of the Immigration and Nationality Act (PL 101-649) authorizing it.	Genocide: Crimes Unpunished, Lessons Unlearned 04/04/2008 - 4:00pm - 04/05/2008 - 3:00pm
<a href="#">Study Human Rights</a>		Chicago, IL
<a href="#">Contact Us</a>	Of those 34, 26 joined up in fiscal 2007. They're spread across 15 states. The program was authorized in 1996, and the Florida Department of Law Enforcement was the first to sign on in 2002.	
<a href="#">Search the Site</a>		U.S. Human Rights Network National Conference 04/17/2008 - 7:00am - 04/20/2008 - 4:00am
<input type="text"/>	Eighty more state and local law enforcement agencies are seeking to join the program, U.S. Immigration and Customs Enforcement spokesman Michael Gilhooly said in an interview, although not all are likely to end up in the program.	Chicago Marriott O'Hare, Chicago, IL
	With Congress having failed twice in two years to pass comprehensive immigration legislation, states and localities have begun looking for ways to deal with the problem of illegal immigration themselves, and advocates of a tougher stance applaud the	Midwest Regional Conference on International Justice



move.

04/25/2008 - 9:00am -  
04/25/2008 - 5:00pm

Center for Immigration Studies senior policy analyst Jessica Vaughan says the 287(g) program has "already shown phenomenal results" and is "a force multiplier for ICE" — agencies have used it to target problems such as gangs, drugs, human smuggling and document fraud.

Chicago, IL; Harold  
Washington Library

Law enforcement agencies have a variety of such agreements with ICE, which trains and supervises the officers. Half the 34 agencies participating have 287(g)-trained officers solely in their jail system, 13 use it only outside of the jail system, and four agencies use it both inside and outside the jail system.

Human Rights Law in  
the Americas - Summer  
Study Abroad Program  
07/21/2008 - 12:00am -  
08/15/2008 - 12:00am

Universidad Nacional, Costa  
Rica

Colorado State Patrol Master Trooper Ron Watkins said Colorado's 22 state troopers with 287(g) authority focus on three major highways that are corridors for smuggling illegal immigrants.

#### Calendar of Events

« Mar 2008 »						
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31						

The officers make only probable cause stops, such as for speeding or driving while intoxicated. Before they had 287(g) authority, if an officer stopped a driver and found a car of suspected illegal immigrants he would sometimes have to wait hours for ICE to arrive and take over, Watkins said in an interview. That would prevent the officer from doing other work, and sometimes the officer would be called away and the illegal immigrants would be free to go, he said. Now the officers can put illegal immigrants in custody and begin the deportation process.

In other uses of the program, before releasing inmates at the end of their sentence, 287(g)-authorized officers confirm inmates are illegal immigrants, issue them a court date, and ensure they are not released when their regular prison term ends.

Under the 287(g) program, 30,000 criminals have been identified as potentially deportable since the beginning of fiscal 2006, according to ICE, although the agency says it cannot break the data down into how many have actually been deported. ICE deported 271,000 illegal immigrants in fiscal 2007, and has 27,500 detention beds to hold those awaiting a court appearance to determine if they are deported.

Maricopa County, Ariz., where Sheriff Joe Arpaio has made something of a name for himself as a tough crusader against illegal immigration, has 160 of the nation's 597 officers with 287(g) training. One hundred of the county's 900 deputy sheriffs, and 60 of a total 2,400 detention officers have 287(g) authority. Maricopa County officers have arrested 450 illegal immigrants found in their normal course of duty since the first 37 officers joined the program in March 2007.

At the opposite end of the country, GOP presidential candidate and former Massachusetts Gov. Mitt Romney signed a 287(g) agreement for state troopers just before he left office, but his Democratic successor, Deval Patrick, modified the agreement, transferring 287(g) authority to the Massachusetts Department of Corrections.

The Los Angeles County Sheriff's Department has eight officers who use 287(g) authority full-time to identify inmates that can be deported. The sheriff's department lacks the resources to pursue deportation of all eligible inmates so it focuses on those with the most serious offenses and with previous deportations. L.A. County Sheriff's Department Lt. Margarito Robles said in an interview. "We're targeting criminal aliens, not the general public, not the hardworking guy who's here trying to make a living for his family," Robles added.

#### Funding Enforcement

Robles agrees with one common criticism of the 287(g) program — that the federal government, not states and localities, should pay for enforcing federal immigration law. That would be the case "in an ideal world" but the program "works for us, there's definitely an advantage for us doing this." The federal government pays for the four- or five-week training, but not the salaries of the officers during or after training. Robles says some money is saved by deporting criminals rather than later rearresting and detaining them, making it difficult to determine the net cost of the program.

Federal State Criminal Alien Assistance Program grants are also available to cover the cost of extended detention time for inmates awaiting deportation proceedings. But despite the grant program, Arizona — which plans to soon have 70 officers with 287(g) authority within its Department

of Corrections and Department of Public Safety — has paid more than \$300 million in the past three years for incarcerating illegal immigrants beyond their regular sentences, Democratic Gov. Janet Napolitano 's spokeswoman Jeanine L'Ecuyer said in an interview.

The president requested \$25.3 million for the program in fiscal 2008, to cover the training of an additional 250 officers, 350 detention beds and associated staffing, and related information technology.

Congress appropriated \$5 million for the 287(g) program in fiscal 2006 and \$5.4 million in fiscal 2007, not including a supplemental appropriation in late fiscal 2006 of \$10.1 million, available through the end of fiscal 2007.

The Senate version of the fiscal 2008 Homeland Security appropriations bill (HR 2638), which is yet to go to conference, specifies funding of at least \$5.4 million to facilitate 287(g) agreements, and some of \$3 billion for border security could also be used for the program. The House version of the bill includes \$17.3 million for the program.

#### Concerns Over Profiling, Interaction

With the administration seeking to train hundreds more 287(g)-authorized officers and 80 more law enforcement agencies requesting to join the program, concern among advocates for illegal immigrants is growing.

Joan Friedland, immigration policy director of the National Immigration Law Center, says the center is "principally concerned" about agreements used outside of jails.

Opponents fear the program will increase racial profiling and deter immigrants from reporting crimes and interacting in other ways with officials. They also complain that enforcement of immigration law is a responsibility of the federal government, not local or state police, and that the program is an "unfunded mandate" because it covers training, detention and IT, but not salaries. Friedland also said that the four weeks of training officers receive is not enough to become well-versed in immigration

law.

"The only way they [law enforcement officers] can do this is by racial profiling — they would be suspicious of people who look foreign and sound foreign, and that's racial and ethnic profiling," Friedland said.

ICE's efforts to enforce fairness in the program won't prevent racial profiling, says Friedland. The agency might supervise the program and a 287(g) agreement could include complaint procedures and cultural sensitivity training, but the bulk of work under the program will be done without ICE agents present, and the public may not be aware of complaint procedures, Friedland said. The program also lacks an independent review of whether it is causing increased racial profiling, she said.

ICE spokesman Gilhooly said the 287(g) training "speaks for itself" and includes instruction in avoiding racial profiling, as well as civil rights law, multicultural awareness, the Department of Justice's policy on race, and complaint procedures. No complaints have been brought against any officers in the program to his knowledge, he said.

Another common criticism of local law enforcement involvement in immigration efforts is that it "interferes with the ability of police to protect communities," in Friedland's words, because immigrants will be afraid to report crimes or that they have been witness to a crime in case they are asked their or their family's immigration status. Programs directed at illegal immigrants tend to create fear in legal ones too, she said.

Center for Immigration Studies' Vaughan says the argument that the 287(g) program will lead to less cooperation with police from the immigrant community "is a complete myth and not supported by any kind of empirical or anecdotal evidence I have ever seen, and most ICE and law enforcement will tell you its complete nonsense. . . . Victims of crime simply aren't going to be subject to removal orders — it's not going to be a priority." The argument "is promulgated by organizations that just don't like immigration law enforcement," Vaughan said. Most agencies seeking the 287(g) agreements emphasize it won't be used to target victims, witnesses or informants but rather criminals, she said.

Vaughan said the program sets priorities for fighting crime and does not take law enforcement personnel away from other duties as they enforce immigration law. If law enforcement agencies are requesting the additional authority, they must be judging that they have time for it, she said. The program might even save time as law enforcement personnel do not have to wait for overstretched ICE agents to respond, Vaughan added.

#### **Participating Entities**

The following have 287(g) memorandums of agreement with ICE (listed alphabetically by state):

Alabama State Police, Ala.  
 Washington County Sheriff's Office, Ark.  
 Rogers Police Department, Ark.  
 City of Springdale Police Department, Ark.  
 Benton County Sheriff's Department, Ark.  
 Arizona Department of Public Safety, Ariz.  
 Arizona Department of Corrections, Ariz.  
 Maricopa County Sheriff's Office, Ariz.  
 Los Angeles County Sheriff's Department, CA  
 Orange County Sheriff's Office, Calif.  
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 York County Sheriff's Office, S.C.  
 Davidson County Sheriff's Office, Tenn.  
 Herndon Police, Va.  
 Prince William-Manassas Adult Detention Center, Va.  
 Rockingham County Sheriff's Office, Va.  
 Shenandoah County Sheriff's Office, Va.

For more information on 287(g) policy, see the [ICE Fact Sheet on Memorandums of Agreement](#).

*By Eleanor Stables, CQ Staff*  
*CQ HOMELAND SECURITY – IMMIGRATION*

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## NUMBER OF LOCAL POLICE AGENCIES INVOLVED IN IMMIGRATION ENFORCEMENT TRIPLES

Tuesday, 13 November 2007

More than 30 local law enforcement agencies around the country have entered agreements with the U.S. government to help enforce federal immigration laws. Twenty-six local agencies have signed up to participate in the government's 287(g) program in just the last year, and 80 more agencies are seeking to join.

The Congressional Quarterly reports that 597 police officers have been trained under the 287(g) program.

The 287(g) authorization, named for the section of the Immigration and Nationality Act that authorizes it, trains local police officers to enforce federal immigration law and allows them to question individuals about their immigration status, regardless of whether they have been accused of a crime.

According to the Congressional Quarterly, "half the 34 agencies participating have 287(g)-trained officers solely in their jail system," which means officers question inmates who have already been convicted of crimes and share with ICE the names of those who do not have lawful immigration status. The other half, however, use the program outside of the jail system, during traffic stops and other actions.

While ICE would have us believe that the practice helps police better protect our communities, advocates of community policing programs as well as some police departments say it would break the trust

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between police officers and the communities they are supposed to serve. Racial profiling is also a concern.

With the administration seeking to train hundreds more 287(g)-authorized officers and 80 more law enforcement agencies requesting to join the program, concern among advocates for illegal immigrants is growing.

Joan Friedland, immigration policy director of the National Immigration Law Center, says the center is "principally concerned" about agreements used outside of jails.

Opponents fear the program will increase racial profiling and deter immigrants from reporting crimes and interacting in other ways with officials. They also complain that enforcement of immigration law is a responsibility of the federal government, not local or state police, and that the program is an "unfunded mandate" because it covers training, detention and IT, but not salaries. Friedland also said that the four weeks of training officers receive is not enough to become well-versed in immigration law.

For more information about the government's use of local law enforcement officers to arrest immigrants, check out NIJC's resource page.

The full Congressional Quarterly article, pasted below, provides plenty of statistics about the growth of the 287(g) program and a list of law enforcement agencies that are already participating.

#### **CQ HOMELAND SECURITY - IMMIGRATION**

**Nov. 7, 2007 - 7:30 p.m.**

#### **State, Local Police Slowly Warming to Immigration Enforcement**

**By Eleanor Stables, CQ Staff**

State and local law enforcement agencies have shown increased interest over the past year in a program to train officers to enforce federal immigration law, and Congress will soon decide whether to fund further growth of the program.

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Greater interest in the program worries some of its critics, who say involving local police in immigration enforcement leads to less cooperation from immigrants and heightens the risk of racial profiling.

A total of 597 officers in 34 state and local law enforcement agencies participate in what is known as the 287(g) program, named for the section of the Immigration and Nationality Act (PL 101-649) authorizing it.

Of those 34, 26 joined up in fiscal 2007. They're spread across 15 states. The program was authorized in 1996, and the Florida Department of Law Enforcement was the first to sign on in 2002.

Eighty more state and local law enforcement agencies are seeking to join the program, U.S. Immigration and Customs Enforcement spokesman Michael Gilhooly said in an interview, although not all are likely to end up in the program.

With Congress having failed twice in two years to pass comprehensive immigration legislation, states and localities have begun looking for ways to deal with the problem of illegal immigration themselves, and advocates of a tougher stance applaud the move.

Center for Immigration Studies senior policy analyst Jessica Vaughan says the 287(g) program has "already shown phenomenal results" and is "a force multiplier for ICE" - agencies have used it to target problems such as gangs, drugs, human smuggling and document fraud.

Law enforcement agencies have a variety of such agreements with ICE, which trains and supervises the officers. Half the 34 agencies participating have 287(g)-trained officers solely in their jail system, 13 use it only outside of the jail system, and four agencies use it both inside and outside the jail system.

Colorado State Patrol Master Trooper Ron Watkins said Colorado's 22 state troopers with 287(g) authority focus on three major highways that are corridors for smuggling illegal immigrants.

The officers make only probable cause stops, such as for speeding or

driving while intoxicated. Before they had 287(g) authority, if an officer stopped a driver and found a car of suspected illegal immigrants he would sometimes have to wait hours for ICE to arrive and take over, Watkins said in an interview. That would prevent the officer from doing other work, and sometimes the officer would be called away and the illegal immigrants would be free to go, he said. Now the officers can put illegal immigrants in custody and begin the deportation process.

In other uses of the program, before releasing inmates at the end of their sentence, 287(g)-authorized officers confirm inmates are illegal immigrants, issue them a court date, and ensure they are not released when their regular prison term ends.

Under the 287(g) program, 30,000 criminals have been identified as potentially deportable since the beginning of fiscal 2006, according to ICE, although the agency says it cannot break the data down into how many have actually been deported. ICE deported 271,000 illegal immigrants in fiscal 2007, and has 27,500 detention beds to hold those awaiting a court appearance to determine if they are deported.

Maricopa County, Ariz., where Sheriff Joe Arpaio has made something of a name for himself as a tough crusader against illegal immigration, has 160 of the nation's 597 officers with 287(g) training. One hundred of the county's 900 deputy sheriffs, and 60 of a total 2,400 detention officers have 287(g) authority. Maricopa County officers have arrested 450 illegal immigrants found in their normal course of duty since the first 37 officers joined the program in March 2007.

At the opposite end of the country, GOP presidential candidate and former Massachusetts Gov. Mitt Romney signed a 287(g) agreement for state troopers just before he left office, but his Democratic successor, Deval Patrick, modified the agreement, transferring 287 (g) authority to the Massachusetts Department of Corrections.

The Los Angeles County Sheriff's Department has eight officers who use 287(g) authority full-time to identify inmates that can be deported. The sheriff's department lacks the resources to pursue deportation of all eligible inmates so it focuses on those with the most serious offenses and with previous deportations, L.A. County Sheriff's Department Lt. Margarito Robles said in an interview.

"We're targeting criminal aliens, not the general public, not the hardworking guy who's here trying to make a living for his family," Robles added.

### **Funding Enforcement**

Robles agrees with one common criticism of the 287(g) program - that the federal government, not states and localities, should pay for enforcing federal immigration law. That would be the case "in an ideal world" but the program "works for us, there's definitely an advantage for us doing this." The federal government pays for the four- or five-week training, but not the salaries of the officers during or after training. Robles says some money is saved by deporting criminals rather than later rearresting and detaining them, making it difficult to determine the net cost of the program.

Federal State Criminal Alien Assistance Program grants are also available to cover the cost of extended detention time for inmates awaiting deportation proceedings. But despite the grant program, Arizona - which plans to soon have 70 officers with 287(g) authority within its Department of Corrections and Department of Public Safety - has paid more than \$300 million in the past three years for incarcerating illegal immigrants beyond their regular sentences, Democratic Gov. Janet Napolitano 's spokeswoman Jeanine L'Ecuyer said in an interview.

The president requested \$25.3 million for the program in fiscal 2008, to cover the training of an additional 250 officers, 350 detention beds and associated staffing, and related information technology.

Congress appropriated \$5 million for the 287(g) program in fiscal 2006 and \$5.4 million in fiscal 2007, not including a supplemental appropriation in late fiscal 2006 of \$10.1 million, available through the end of fiscal 2007.

The Senate version of the fiscal 2008 Homeland Security appropriations bill (HR 2638), which is yet to go to conference, specifies funding of at least \$5.4 million to facilitate 287(g) agreements, and some of \$3 billion for border security could also be used for the program. The House version of the bill includes \$17.3 million for the program.

### **Concerns Over Profiling, Interaction**

With the administration seeking to train hundreds more 287(g)-authorized officers and 80 more law enforcement agencies requesting to join the program, concern among advocates for illegal immigrants is growing.

Joan Friedland, immigration policy director of the National Immigration Law Center, says the center is "principally concerned" about agreements used outside of jails.

Opponents fear the program will increase racial profiling and deter immigrants from reporting crimes and interacting in other ways with officials. They also complain that enforcement of immigration law is a responsibility of the federal government, not local or state police, and that the program is an "unfunded mandate" because it covers training, detention and IT, but not salaries. Friedland also said that the four weeks of training officers receive is not enough to become well-versed in immigration law.

"The only way they [law enforcement officers] can do this is by racial profiling - they would be suspicious of people who look foreign and sound foreign, and that's racial and ethnic profiling," Friedland said.

ICE's efforts to enforce fairness in the program won't prevent racial profiling, says Friedland. The agency might supervise the program and a 287(g) agreement could include complaint procedures and cultural sensitivity training, but the bulk of work under the program will be done without ICE agents present, and the public may not be aware of complaint procedures, Friedland said. The program also lacks an independent review of whether it is causing increased racial profiling, she said.

ICE spokesman Gilhooly said the 287(g) training "speaks for itself" and includes instruction in avoiding racial profiling, as well as civil rights law, multicultural awareness, the Department of Justice's policy on race, and complaint procedures. No complaints have been brought against any officers in the program to his knowledge, he said.

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 Arizona Department of Public Safety, Ariz.  
 Arizona Department of Corrections, Ariz.  
 Maricopa County Sheriff's Office, Ariz.  
 Los Angeles County Sheriff's Department  
 Orange County Sheriff's Office, Calif.

Riverside County Sheriff's Office, Calif.  
San Bernardino County Sheriff's Office, Calif.  
Colorado Department of Public Safety  
El Paso County Sheriff's Office, Colo.  
Collier County Sheriff's Office, Fla.  
Florida Department of Law Enforcement  
Cobb County Sheriff's Office, Ga.  
Georgia Department of Public Safety  
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## "Operation Streamline" Hits Arizona. Migrants Jailed up to 180 days for Border Crossing.

Tuesday, 15 January 2008

As if fourteen years of failed border policy based on the absurd idea that migration can be deterred wasn't enough, the Tucson Sector Border Patrol began implementing this week "Operation Streamline." Streamline calls for the criminal prosecution of all migrants detained by the Tucson Sector Border Patrol and carries a 2 week to 6 month jail time! While Border Patrol claims that the project will deter people from coming across the border, agencies like the federal public defenders office that will have to shoulder the burden of this program have been quick to point out its ineffectiveness and excessive use of already limited federal resources.

The Tucson Sector has the highest rate of apprehension of any border crossing. Border Patrol reports that from 500 to 1,500 men, women and children are picked up every single day. While Border Patrol points to Streamline's success in the Yuma and Laredo sectors, those regions have less than 1/10th the foot traffic of the Tucson Sector. While Operation Streamline is starting with the goal of prosecuting 40 people a day that are picked up within a small segment of the 220 mile border in Arizona, the plan is to expand incrementally.

The criminal prosecution of migrants would require U.S. Marshall's to transport the detainees to the Tucson federal court house, a federal judge to hear the cases, prosecutors and defense attorneys. The public defender's office has said that Streamline will not enable any of their new clients to have adequate representation. These sham trials will make a mockery of due process and other basic constitutional rights. Border Action Network, and other southern-Arizona based organizations, have met with the Border Patrol about this Initiative and is calling for its cancellation. Please contact your member of Congress TODAY, before any more people are subjected to these mock trials and unjustified incarcerations to demand its cancellation.

Make a contribution to support immigrant organizing for human and civil rights.



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Border Action Network for 1999 and works with immigrant border communities in southern Arizona to ensure that our respected, our human dignity and that our communities places to live. We are a member-based organization that coordinates grassroots community organizing.

Border Action Network - "Operation Streamline" Hits Arizona. Migrants Jailed up to 180... Page 2 of 2

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## Mexico

### Border crackdown fills jails

Web Posted: 11/19/2007 11:55 PM CST

James Pinkerton  
Houston Chronicle

LAREDO — After pleading guilty to entering the country illegally, the Mexican immigrant from Veracruz told a federal judge here last week he came to the U.S. to earn money to pay for his mother's funeral.

"It doesn't matter if you're trying to pay off funeral expenses or take care of a sick family member," said U.S. Magistrate Diana Saldaña, referring to another immigrant. "When you cross the Rio Grande, you're going to be spending time in prison if the Border Patrol finds you — that's the bottom line."

The frank exchange between judge and immigrant has become a daily occurrence since Oct. 30, when the U.S. Border Patrol launched Operation Streamline-Laredo, a zero-tolerance campaign that prosecutes, jails and deports nearly every undocumented adult immigrant that border agents catch.

The controversial border operation has jammed local jails to capacity, strained the staff of the federal public defender's office and sparked charges that immigrants' due

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process rights are being violated. But it has been applauded by those favoring strict enforcement of immigration laws.

Before the operation, agents with the Laredo patrol sector routinely allowed undocumented immigrants from Mexico to return home voluntarily. And a lack of detention space resulted in a "catch-and-release" policy that allowed non-Mexican immigrants to post bond pending a hearing, but few showed up for their court dates.

But at the federal courthouse in downtown Laredo last week, a mere two weeks after the crackdown began, scores of ordinary people shared the halls where crooked officials, drug kingpins and human traffickers are brought to justice. They included bricklayers, construction workers, dishwashers and waitresses, all snared by agents after crossing the Rio Grande illegally.

The immigrants, in the same rumpled clothing they wore when arrested, were escorted to the judge's bench in groups of 18 or 20. After a Border Patrol officer read a charge that applied to the entire group, each immigrant called out, "Culpable" — Spanish for guilty.

The judge repeatedly warned the immigrants — some of whom had been detained up to 10 times but not charged — that an arrest for a second offense could result in a more serious felony charge and a longer jail sentence.

"This whole thing about them catching you and sending you back isn't going to happen anymore," the magistrate warned.

During one morning session, it took about three hours for 79 immigrants to make their first appearance before the magistrate, plead guilty and receive sentences ranging from time served to 45 days in jail. Most of them were represented by the same public defender and pleaded guilty to illegal entry, a misdemeanor.

"If you ask me, they don't come over here to commit crimes," said Francisco Vaicarcel, an assistant federal public defender who represented most of the immigrants in the session. "I don't think this should be an enforcement priority. Families are being torn apart."

The immigrants are being detained crossing the border or are caught elsewhere in the Laredo area.

At the U.S. district clerk's office in Laredo, Deputy Clerk Ben Mendoza said the magistrate's docket has doubled since Streamline began.

"I'm getting calls constantly from families about where their relatives are being held," he said.

Arthur Thomas, deputy U.S. Marshal in Laredo, said beds in Laredo jails are full, forcing immigrants to be sent as far away as Waco and East Texas.

Kathleen Walker, an El Paso immigration attorney and president of the American Immigration Lawyers Association, said the zero-tolerance operation and the limited legal representation available to immigrants denies them due process, especially those with potential claims of asylum or U.S. citizenship.

"We are throwing away the Constitution for expediency, and we're reducing our security by not prosecuting crimes that deserve more attention, felonies like

narcotic and human trafficking," she said, referring to the crowded magistrate's docket.

But many applaud the new emphasis on enforcement at the nation's busiest inland port.

"We're pleased, because basically they're enforcing the law," said Louise Whiteford, president of the Houston-based Texans For Immigration Reform. "It's long overdue."

Border Patrol officials in Laredo say it's too early to gauge how effective the operation is and declined a request for conviction statistics for the initial weeks. Laredo is the third Border Patrol sector on the Southwest border to implement the zero-tolerance operation, and so far it is under way only in the metropolitan areas of Laredo.

Ramon Rivera, an assistant Border Patrol chief at agency headquarters in Washington D.C., said the operation will be assessed in a couple of months after the number of apprehensions are compared to the same period last year.

In the Yuma sector in Arizona, Operation Streamline eventually resulted in a 68 percent reduction in apprehensions between fiscal years 2006 and 2007, and during the same period the Del Rio Sector registered a 46 percent decline, Rivera said.

During a tour of the riverfront last week, the challenges of enforcement were evident.

Squads of Border Patrol agents, guided by surveillance cameras on observation towers, played a cat-and-mouse game with small groups of immigrants crossing the Rio Grande. After reaching the Texas side, the immigrants hid in impenetrable stands of cane lining the riverbank for miles, waiting to walk into adjoining neighborhoods and jump into a smuggler's car.

"If you were going to completely shut it down, you'd have to establish some kind of buffer, 100 or 200 yards from the river, and clear it all," said Border Patrol supervisor Jesus Chan. "But that's not going to happen."

Instead, they hope immigrants like Sylvia Licona Garcia will warn their friends about the new mandatory jail time. She was one of 70 immigrants, some from as far away as Kosovo and Sri Lanka, in holding cells last week at the Border Patrol's north Laredo station.

Licona, a 21-year-old Veracruz native, said she heard about the operation before arranging for human traffickers to transport her to Houston.

The price was \$1,500, and another \$1,000 for a flight from Houston to Washington state, where she planned to rejoin her husband.

"I heard about it, but I didn't believe it," Licona said as she awaited deportation at the detention area inside the station. "But now, after being locked up in jail for two days, I believe it."

After swimming the Rio Grande, she and two friends were picked up by smugglers and left Laredo, driving toward San Antonio. They were quickly stopped. The smugglers jumped from the car, which crashed.

In the same holding area was Jaime Pinto Aguilar, a 38-year-old Nuevo Laredo man who waded the Rio Grande on Nov. 11. Pinto, who has a degree in international commerce, said he had been unable to find a job for the last four months.

"I told my wife I had to go," he said. "Christmas is coming, and I'm not going to leave my children without anything. And there were bills."

Instead of finding a job washing dishes in a Laredo restaurant relatives told him about, Pinto spent four days in jail.

"I will not come back illegally, not for anything in the world," Pinto said. "I was in jail with a bunch of felons."

Pinto's wife, his mother and sister Anna Maria Pinto watched him receive his sentence in court.

When he returned home Thursday, they predicted news of Operation Streamline will spread in Mexico. But they weren't sure of its effect on illegal immigration.

"People will hear of these cases, but in this community every day people are crossing," Anna Maria Pinto said. "Immigrants are trying to get across to live the American dream, to find a job, to build a better life. But the consequences are very grave."

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## Courts unable to keep up with border arrests

**Sean Holstege**  
The Arizona Republic  
Feb. 20, 2008 12:00 AM

The government has started cracking down on illegal border crossers in the Tucson Sector. But limited resources in Arizona's federal-court system are blocking the goal of prosecuting everyone who enters the country illegally.

The Border Patrol has referred 757 cases to authorities since the government began prosecuting illegal crossers in the Tucson area on Jan. 14. Up to 42 are prosecuted daily, and there are plans to prosecute up to 100 cases a day in the busiest human-smuggling area on the border.

But federal courts in Tucson can hold only 60 immigration defendants a day, and even if they could handle the 100-a-day workload, that amounts to prosecuting only 10 percent of those arrested by the Border Patrol.

Still, officials expect the threat of prosecution and prison time to deter illegal crossers.

The Operation Streamline policy, which has proved effective in the Yuma Sector and two parts of Texas, involves filing charges against nearly everyone caught crossing the border illegally.

Mexican authorities confirm that illegal immigrants have been deterred from crossing into the Yuma Sector by the prospect of spending two weeks to six months in prison for the misdemeanor crime.

Historically, illegal immigrants have immediately been shipped back to Mexico if they did not have criminal records. Foreign criminals are deported after serving their prison sentences. And if they are caught re-entering illegally again, they are charged with felonies, which can carry sentences up to five years.

### Demand on courts

The U.S. District Court of Arizona is the nation's busiest, presiding Chief Judge John M. Roll said.

He said judges in his district sentence 500 felons a year, compared with a national average of 90. His office has asked the 9th U.S. Circuit Court of Appeals to lend magistrates.

U.S. Magistrate Glenda Edmonds said she and her colleagues in Tucson typically handle half a dozen pretrial hearings a day.

To meet the demand of the new flux of immigration cases, one magistrate takes them all for a week in a rotation system.

"If we get to the point where we get to 100 cases a day in this building, we will need at least one more magistrate," Edmonds said.


Lawyers are also in short supply. The Department of Homeland Security has lent the U.S. Attorney's Office four lawyers to help prosecute the new immigration cases.

First Assistant Federal Public Defender Heather Williams said there are only 32 panel lawyers who are willing to handle Streamline cases on a contract fee from the government.


The court may increase the maximum caseload per lawyer or assign a public defender exclusively to immigration cases, Williams said, concluding that her office "will be able to handle fewer criminal cases."

Operation Streamline was created to deter illegal immigration. The Yuma Sector saw a 70 percent drop in arrests last year at a time arrests borderwide

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tell 20 percent.

The policy was credited, along with extra border agents and improved fencing. Yet even in the Yuma Sector, where the Border Patrol arrests one-tenth of those arrested in the Tucson Sector, authorities have been unable to prosecute everyone.

The Border Patrol has referred 1,511 immigrants for prosecution since the program was extended to the entire sector in the fall. It made 4,066 arrests.

Courtroom holding space is a limiting factor in Yuma, too. Judges say they can handle up to 75 prosecutions a day, but because of space constraints, only 30 cases can be sent.

In the Tucson Sector, the Border Patrol has no immediate plans to phase in more than 100 prosecutions daily. That means at its peak, only one in 10 of those arrested can be prosecuted.

Still, Deputy Chief Robert Boatright said the clampdown is having results. He said that, in the 15-mile target area where the program was launched, a 79 percent recidivism rate has plummeted to 46 percent. Elsewhere in the Tucson Sector, immigrants re-enter 80 to 92 percent of the time.

"We've been able to gain control of that area, maintain control of that area and widen out that area," Boatright said.

Tucson Sector agents arrested 11 percent fewer border crossers in January than they did a year earlier, although many believe this has as much to do with a slowing U.S. economy and Arizona's strict employer-sanctions law.

Boatright said even a 10 percent risk of being imprisoned appears too great for many immigrants.

"I've talked to detainees, and they say it's just not worth it to them," said Ray Kondo, assistant chief in Arizona for the U.S. Marshal Service, which transports and houses the prisoners.

#### Effect on prisons

With federal detentions taking in the extra misdemeanor-immigration convicts, some prison-

reform watchdogs worry that the prisons will run out of bed space and create a demand for more prisons or a crunch to release other criminals early.

Kondo said that won't happen because once prosecutions reach their quota, people will be deported as fast as they are convicted.

Even if Arizona's prisons get overloaded, federal prisoners can, and routinely do, get transferred to facilities throughout the country.

Reformists such as Judy Greene of Justice Strategies are unconvinced, knowing the government faces a million border crossers a year.


"This looks tough but accomplishes very little. It will increase pressure for expanding the detention systems," she said. "It's going to cost a lot of money and drain resources from more important cases."

Two weeks ago, U.S. Rep. Gabrielle Giffords, a Tucson Democrat, met for the fourth time with judges and federal agents about Streamline.


Her spokesman, C.J. Karamargin, said Giffords supports the stronger enforcement and has been advised that it has worked elsewhere, but Giffords shares concerns about the drain on resources for the criminal-justice system.

"Those concerns are valid," Karamargin said, "She wants these federal agencies to have the resources

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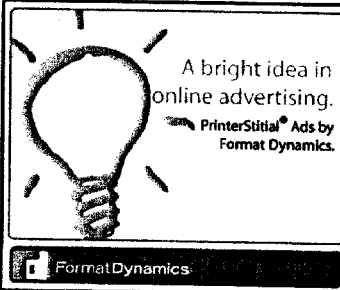
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Office of Public Affairs  
U.S. Department of Homeland Security



**U.S. Immigration  
and Customs  
Enforcement**

August 21, 2007  
Contact: ICE Public Affairs  
(202) 615-6317

## News Release

### **New ICE ACCESS program helps local law enforcement ensure public safety**

*ICE and locals working together in different ways, for maximum effectiveness*

WASHINGTON, DC – U.S. Immigration and Customs Enforcement (ICE) today announces the new ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) program. ICE ACCESS will provide local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities.

"Local law enforcement agencies have shown tremendous interest in working with ICE," said Department of Homeland Security Assistant Secretary, Julie L. Myers, who oversees ICE. "Combining federal, state and local resources has proven successful in safeguarding the public. Now, we want to build on that success by using ICE's unique authorities to further aid communities who seek our assistance."

ICE developed the ACCESS program in response to the widespread interest from local law enforcement agencies that have requested ICE partnerships through the 287(g) program, which cross-designates local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. In the past two years, the 287(g) program has identified more than 22,000 illegal aliens, mostly in county jails, for possible deportation. More than 60 municipal, county, and state agencies nationwide have requested 287(g) MOAs with ICE and more than 400 local and state officers have been trained under the program.

The 287g program is only one component under the ICE ACCESS umbrella of services and programs offered for assistance to local law enforcement officers. Other ICE ACCESS enforcement options include the creation of local task forces targeting specific challenges like gangs or document fraud, the presence of a Criminal Alien Program (CAP) team in local detention facilities to identify criminal aliens, or training to utilize the ICE Law Enforcement Support Center (LESC) which provides officers the ability to inquire about a person's immigration and criminal history.

ICE agents and officers will meet with agencies requesting ICE ACCESS assistance to assess local needs. Based upon these assessments, ICE and local agencies will determine which type of partnership is most beneficial and sustainable before entering into an official agreement.

Law enforcement agencies interested in reviewing the myriad of enforcement programs under the ICE ACCESS program are encouraged to call their local ICE office or visit [www.ice.gov](http://www.ice.gov) for more information.

# ICE #

*U.S. Immigration and Customs Enforcement was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities*

